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No. 33] NEW DELHI, AUGUST 12—AUGUST 18, 2007, SATURDAY/SRAVANA 21—SRAVANA 27, 1929

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके ।
Separate Paging is given to this Part in order that it may be filed as a separate compilation.

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

गृह मंत्रालय

नई दिल्ली, 7 अगस्त, 2007

का.आ. 2285.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम (4) के अनुसरण में गृह मंत्रालय के निम्नलिखित कार्यालयों में हिंदी का कार्यसाधक ज्ञान रखने वाले कर्मचारियों की संख्या 80% से अधिक हो जाने के फलस्वरूप उन्हें एतद्द्वारा अधिसूचित करती है:—

कार्यालय अपर महानिदेशक,
उत्तरी अंचल, केन्द्रीय रिजर्व पुलिस बल,
चंडीगढ़ ।

कार्यालय पुलिस उप महानिरीक्षक,
के.रि.पु.ब., सिल्चर,
(असम)

[सं. 12017/1/2004-हिन्दी]

अवधेश कुमार मिश्र, निदेशक(राजभाषा)

MINISTRY OF HOME AFFAIRS

New Delhi, the 7th August, 2007

S.O. 2285.— In pursuance of sub rule (4) of Rule 10 of the Official Languages (Use for Official Purpose of the Union) Rules, 1976, the Central Government hereby notifies the following offices of the Ministry of Home Affairs where the percentage of Hindi knowing staff has gone above 80% :—

Office of the Additional Director General,

North Zone, CRPF,

Chandigarh.

Office of the Dy. Inspector General of Police,

CRPF, Silchar,

(Assam).

[No. 12017/1/2004-Hindi]

AVADHESH KUMAR MISHRA, Director (OL)

कार्यालय, मुख्य आयकर आयुक्त

जोधपुर, 31 जुलाई, 2007

सं. 7/2007-08

(आयकर)

का.आ. 2286.—आयकर अधिनियम, 1961 (1961 का 43 वां) की धारा 10 के खण्ड (23ग) उपखण्ड (V) के साथ पठित आयकर नियमावली-1962 के नियम 2ग के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मुख्य आयकर आयुक्त, जोधपुर एतद्वारा "प्रजापिता ब्रह्माकुमारी ईश्वरीय विश्वविद्यालय, पांडव भवन, माउन्ट आबु, जिला सिरोही, राजस्थान" को कर निर्धारण वर्ष 2007-08 से 2009-10 तक के लिये निम्नलिखित शर्तों के अधीन रहते हुए उक्त उपखण्ड के प्रयोजनार्थ अधिसूचित करते हैं, अर्थात् :—

- (i) कर निर्धारित अपनी आय का इस्तेमाल अथवा अपनी आय का इस्तेमाल करने के लिए उनका संचयन पूर्णतया तथा अनन्यतया उन उद्देश्यों के लिए करेगा जिनके लिए इसकी स्थापना की गई है :
- (ii) कर निर्धारित उपर्युक्त कर निर्धारण वर्षों से संगत पूर्ववर्ती वर्षों की किसी भी अवधि के दौरान धारा 11 की उपधारा (v) में विनिर्दिष्ट किसी एक अथवा एक से अधिक ढंग अथवा तरीकों से भिन्न तरीकों से अपनी निधि (जेवर, जवाहिरात, फर्नीचर आदि के रूप में प्राप्त तथा अनुरक्षित स्वैच्छिक अंशदान से भिन्न) का निवेश नहीं करेगी अथवा उसे जमा नहीं करेगी ।
- (iii) यह अधिसूचना किसी ऐसी आय के सम्बन्ध में लागू नहीं होगी, जो कि कारोबार से प्राप्त लाभ तथा अभिलाभ हो जब तक कि ऐसा कारोबार उक्त कर निर्धारित के उद्देश्यों की प्राप्ति के प्रासंगिक नहीं हो तथा ऐसे कारोबार के सम्बन्ध में अलग से लेखा पुस्तिकाएं नहीं रखी जाती हों;
- (iv) कर निर्धारित आयकर अधिनियम, 1961 के प्रावधानों के अनुसार अपनी आय विवरणी नियमित रूप से आयकर प्राधिकारी के समक्ष दाखिल करेगा;
- (v) विधेयन की स्थिति में इसकी अतिरिक्त राशियां और परिसम्पत्तियां समान उद्देश्यों वाले धर्मार्थ संगठन को दे दी जायेंगी ।

यह अधिसूचना केवल संस्था की ओर से आय के प्राप्तकर्ता पर ही लागू होगी न कि इस तरह के प्राप्तकर्ता द्वारा किसी अन्य प्राप्ति अथवा आय पर । संस्था के आय की कराधेयता अथवा अन्यथा पर, आयकर अधिनियम, 1961 के उपबन्धों के अनुसार पृथक् रूप से विचार किया जायेगा ।

[फा. सं. मुआआ/आ.अ.(तक.)/जो./10(23सी)/2007-08/1338]

विजय रंजन, मुख्य आयकर आयुक्त

OFFICE OF THE CHIEF COMMISSIONER OF INCOMETAX

Jodhpur, the 31st July, 2007

No. 7/2007-08

(INCOME-TAX)

S.O. 2286.— In exercise of powers conferred by the Sub-clause (v) of clause (23C) of Section 10 of the Income-tax Act, 1961 (43 of 1961), read with rule 2C of the I.T. Rules, 1962, I, Chief Commissioner of Income Tax, Jodhpur hereby notifies the "Prajapita Brahma Kumaris Ishwariya Vishwa Vidyalaya, Pandav Bhawan, Mount Abu, Dist. Sirohi, Rajasthan" for the purpose of the said Sub-clause for the assessment years 2007-08 to 2009-10 subject to the following conditions,

namely :—

- (i) the assessee will apply its income, or accumulate for application, wholly and exclusively to the objects for which it is established;
- (ii) the assessee will not invest or deposit its fund (other than voluntary contributions received and maintained in the form of jewellery, furniture etc.) for any period during the previous years relevant to the assessment years mentioned above other wise than in any one or more of the forms or modes specified in Sub-section (5) of Section 11;
- (iii) this notification will not apply in relation to any income being profits and gains of business, unless the business is incidental to the attainment of the objectives of the assessee and separate books of accounts are maintained in respect of such business;
- (iv) the assessee will regularly file its return of income before the Income-tax authority in accordance with the provisions of the Income-tax Act, 1961;
- (v) that in the event of dissolution, its surplus and the assets will be given to an organization with similar objectives.

This notification is applicable only to the recipients of income on behalf of the assessee and not to any other receipt or income of such recipients. Taxability or, otherwise of the income of the assessee would be separately considered as per the provisions of the Income-tax Act, 1961.

[F. No. CCIT/ITO(Tech)/Ju./10/(23C)/2007-08/1338]

VIJAY RANJAN, Chief Commissioner of Income-tax

वित्त मंत्रालय

(राजस्व विभाग)

(केन्द्रीय प्रत्यक्ष कर-बोर्ड)

नई दिल्ली, 31 जुलाई, 2007

(आयकर)

का.आ. 2287.—जबकि आयकर अधिनियम, 1961 (1961 का 43) (यहां आगे उक्त अधिनियम कहा गया है) की धारा 80 झ क की उपधारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार ने 1 अप्रैल, 1997 से शुरू होकर तथा 31 मार्च, 2002 को समाप्त होने वाली अवधि के लिये संख्या का. आ. 193(अ) दिनांक 30 मार्च, 1999 के जरिए तथा 1 अप्रैल, 1997 से शुरू होकर तथा 31 मार्च, 2006 को समाप्त अवधि के लिए संख्या का.आ. 354(अ) के जरिए भारत सरकार, वाणिज्य और उद्योग मंत्रालय (औद्योगिक नीति और संवर्धन विभाग) की अधिसूचनाओं द्वारा औद्योगिक पार्क की योजना निर्मित और अधिसूचित की है;

और जबकि मैसर्स साइबर पार्क डवलपमेंट एंड कंस्ट्रक्शन लिमिटेड, जिसका पंजीकृत कार्यालय 19, कुमार कृपा रोड, बंगलौर-560 001 में है, वह प्लॉट सं. 76, डोड्डा ठोगुर, इलैक्ट्रॉनिक सिटी, बंगलौर रूरल, कर्नाटक-560 010 में एक औद्योगिक पार्क का विकास कर रहा है;

और जबकि केन्द्र सरकार ने इस अधिसूचना के अनुबंध में उल्लिखित नियम और शर्तों के अधीन वाणिज्य तथा उद्योग मंत्रालय के दिनांक 15-3-2004 के पत्र सं. 15(27)/2003-आई पी एंड आई डी (जैसा कि दिनांक 31-12-2004 के पत्र तथा दिनांक 11-4-2007 के पत्र सं. 15/104/2006-आई पी एंड आई डी द्वारा संशोधित किया गया है) के अन्तर्गत उक्त औद्योगिक पार्क अनुमोदित किया है;

अब, इसलिए, उक्त अधिनियम की धारा 80 झ क की उपधारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार एतद्वारा उक्त खंड (iii) के प्रयोजनार्थ औद्योगिक पार्क के रूप में मैसर्स साइबर पार्क डवलपमेंट एंड कंस्ट्रक्शन लिमिटेड, बंगलौर द्वारा विकसित तथा अनुरक्षित एवं प्रचालित किए जा रहे उक्त उपक्रम को अधिसूचित करती है।

अनुबंध

शर्तें जिन पर भारत सरकार ने मैसर्स साइबर पार्क डवलपमेंट एंड कंस्ट्रक्शन लिमिटेड, बंगलौर द्वारा औद्योगिक पार्क गठित किए जाने हेतु अनुमोदन प्रदान किया है।

- | | | |
|-------------------------------|---|--|
| 1. (i) औद्योगिक उपक्रम का नाम | : | साइबर पार्क डवलपमेंट एंड कंस्ट्रक्शन लिमिटेड |
| (ii) प्रस्तावित स्थान | : | प्लॉट सं. 76, डोड्डा ठोगुर, इलैक्ट्रॉनिक सिटी,
बंगलौर रूरल, कर्नाटक-560 100 |

- (iii) औद्योगिक पार्क का क्षेत्रफल : 2.73 एकड़
(iv) प्रस्तावित कार्यकलाप :

एन आई सी संहिता के साथ औद्योगिक कार्यकलाप का स्वरूप

एन आई सी संहिता

क्रम सं.	अनुभाग	प्रभाग	समूह	श्रेणी	
क	3	36	365	—	रेडियो प्रसारण, टी.वी. प्रसारण, रडार अप्रेटस एवं रेडियो रिमोट कंट्रोल अप्रेटस एवं रेडियो/लाइन- टेलिफोनी एवं लाइनटेलिग्राफी के लिए अप्रेटस का विनिर्माण
ख	8	89	892	—	डाटा प्रोसेसिंग, सॉफ्टवेयर डेवलपमेंट एंड कम्प्यूटर कंसल्टेंसी सर्विसिज
ग	8	89	893	—	कारोबार एवं प्रबन्धन परामर्शदात्री कार्य-कलाप
घ	8	89	894	—	वास्तु संबंधी एवं इंजीनियरिंग और अन्य तकनीकी परामर्शदात्री कार्य-कलाप ।

- (v) औद्योगिक उपयोग के लिए प्रस्तावित आवंटनीय क्षेत्र का प्रतिशत : 96.54%
- (vi) वाणिज्यिक उपयोग के लिए निर्धारित भूमि का प्रतिशत : 3.46%
- (vii) औद्योगिक यूनिटों की न्यूनतम संख्या : 7 यूनिटें
- (viii) प्रस्तावित कुल निवेश (राशि रुपए में) : 64.16 करोड़
- (ix) औद्योगिक उपयोग के लिए निर्मित स्थान पर निवेश (राशि रुपए में) : 45.35 करोड़
- (x) अवसंरचनात्मक विकास पर निवेश जिसमें औद्योगिक उपयोग के लिए निर्मित स्थान पर निवेश भी शामिल है (राशि रुपए में) : 59.44 करोड़
- (xi) औद्योगिक पार्क के आरंभ होने की प्रस्तावित तिथि : 1-10-2005

2. किसी औद्योगिक पार्क में अवसंरचना विकास पर न्यूनतम निवेश कुल परियोजना लागत के 50% से कम नहीं होगा। ऐसे औद्योगिक पार्क जो औद्योगिक उपयोग के लिए निर्मित स्थल प्रदान करता है, के मामले में औद्योगिक स्थल के निर्माण कार्य की लागत सहित विकास अवसंरचना पर न्यूनतम खर्च कुल परियोजना लागत के 60% से कम नहीं होगा।

3. संरचना विकास में सड़क (सम्पर्क सड़क सहित), जलापूर्ति तथा सीवरेज, दूषित जल शोधन सुविधा, टेलिकाम नेटवर्क, विद्युत उत्पादन एवं वितरण, वातानुकूलन तथा ऐसी अन्य सुविधाएं जो औद्योगिक कार्यकलाप हेतु सामान्य उपयोग के लिए हैं जो वाणिज्यिक दृष्टि से निर्धारणीय एवं प्रयुक्त हैं।

4. दिनांक 1 अप्रैल, 2002 की का.आ. 354(अ) के पैराग्राफ 6 के उप पैराग्राफ (ख) में निर्दिष्ट तालिका के कालम (2) में उल्लिखित कोई एकल इकाई किसी औद्योगिक पार्क के लिए नियत औद्योगिक क्षेत्र का 50% से अधिक हिस्सा धारित नहीं करेगी। इस प्रयोजनार्थ किसी इकाई का आशय एक या एक से अधिक राज्य अथवा केन्द्रीय कर कानून के प्रयोजन के लिए किसी अलग तथा भिन्न कम्पनी से है।

5. आवश्यक अनुमोदनों जिनमें विदेशी निवेश संवर्धन बोर्ड के द्वारा विदेशी प्रत्यक्ष निवेश अथवा अनिवासी भारतीय निवेश अथवा भारतीय रिजर्व बैंक अथवा यथा समय प्रवृत्त किसी कानून के अन्तर्गत विनिर्दिष्ट कोई प्राधिकरण भी शामिल हैं, को प्रवृत्त नीति तथा प्रक्रियाओं के अनुसार अलग से लिया जाएगा।

6. इस अधिसूचना के पैरा 1 (vii) में विनिर्दिष्ट संख्या में इकाइयों के औद्योगिक पार्क में अवस्थित होने के उपरान्त ही इस अधिनियम के अन्तर्गत कर लाभ हो सकते हैं।
7. मैसर्स साइबर पार्क डवलपमेंट एंड कंस्ट्रक्शन लिमिटेड, बंगलौर उस अवधि के दौरान औद्योगिक पार्क का प्रचालन जारी रखेगा जिस अवधि में आयकर अधिनियम, 1961 की धारा 80 झ क की उपधारा (4) के खंड (iii) के अन्तर्गत लाभ लिए जाने हैं।
8. यदि उक्त औद्योगिक पार्क के आरंभ होने में इस अधिसूचना के पैरा 1 (xi) में निर्दिष्ट तिथि से एक वर्ष से ज्यादा विलम्ब होता है तो आयकर अधिनियम, 1961 की धारा 80 झ क की उपधारा 4 (iii) के अन्तर्गत लाभ प्राप्त करने के लिए औद्योगिक पार्क योजना, 2002 के अंतर्गत नया अनुमोदन प्राप्त करना अपेक्षित होगा।
9. यह अनुमोदन अवैध हो जाएगा और मैसर्स साइबर पार्क डवलपमेंट एंड कंस्ट्रक्शन लिमिटेड, बंगलौर ऐसी अवैधता के किसी भी परिणाम के लिए स्वयं ही जिम्मेदार होगा, यदि
- (i) आवेदन पत्र जिसके आधार पर केन्द्र सरकार द्वारा अनुमोदन प्रदान किया गया है, में गलत सूचना/सूचना अथवा कतिपय तथ्यपरक सूचना न दी गई हो।
 - (ii) यह उक्त औद्योगिक पार्क की अवस्थिति हेतु है जिसके लिए अनुमोदन किसी अन्य उपक्रम के नाम में पहले ही प्रदान किया गया है।
10. मैसर्स साइबर पार्क डवलपमेंट एंड कंस्ट्रक्शन लिमिटेड, बंगलौर (अर्थात् अन्तरणकर्ता उपक्रम) औद्योगिक पार्क का प्रचालन और अनुरक्षण किसी दूसरे उपक्रम (अर्थात् अंतरिती उपक्रम) को हस्तांतरित करेगा तो अंतरणकर्ता और अंतरिती उपर्युक्त हस्तांतरण के लिए अंतरणकर्ता और अंतरिती उपक्रम के बीच निष्पादित करार की प्रति के साथ औद्योगिक सहायता सचिवालय, औद्योगिक नीति और संवर्धन विभाग, उद्योग भवन, नई दिल्ली-11 की उद्यमशीलता सहायता यूनिट संयुक्त रूप से सूचित करेंगे।
11. इस अधिसूचना में उल्लिखित शर्तों के साथ-साथ औद्योगिक पार्क स्कीम, 2002 में शामिल उन शर्तों का अनुपालन उस अवधि के दौरान किया जाना चाहिए जिसके लिए इस स्कीम के अंतर्गत लाभ प्राप्त किए जाने हैं। केन्द्र सरकार उपर्युक्त अनुमोदन को वापस ले सकती है यदि मैसर्स साइबर पार्क डवलपमेंट एंड कंस्ट्रक्शन लिमिटेड, बंगलौर औद्योगिक पार्क स्कीम, 2002 में विहित शर्तों अथवा इस अधिसूचना की किसी भी शर्त के अनुपालन में असफल रहता है।
12. केन्द्र सरकार के अनुमोदन के बिना प्रोजेक्ट प्लान में किया गया कोई भी संशोधन अथवा भविष्य में पता लगना अथवा किसी ठोस तथ्य का उद्घाटन करने में आवेदक का असफल रहना, औद्योगिक पार्क के अनुमोदन को अवैध बना देगा।

[अधिसूचना सं. 211/2007/फा. सं. 178/76/2007-आ.क. नि.-I]

दीपक गर्ग, अवर सचिव

MINISTRY OF FINANCE
(Department of Revenue)
(CENTRAL BOARD OF DIRECT TAXES)
New Delhi, the 31st July, 2007
(INCOME-TAX)

S.O. 2287.—Whereas the Central Government in exercise of the powers conferred by clause (iii) of sub-section (4) of Section 80-IA of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the said Act), has framed and notified a scheme for industrial park, by the notifications of the Government of India in the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) vide number S. O. 193(E), dated the 30th March, 1999, for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2002 and vide number S.O. 354(E) dated the 1st day of April, 2002, for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2006;

And whereas M/s. Cyber Park Development & Construction Limited, having registered office at 19, Kumara Krupa Road, Bangalore-560 001, is developing an Industrial Park at Plot No. 76, Doddas Thogur, Electronic City, Bangalore Rural, Karnataka-560 100;

And whereas the Central Government has approved the said Industrial Park vide Ministry of Commerce and Industry letter No. 15(27)/2003-IP & ID dated 15-3-2004 (as modified vide letter dated 31-12-2004 and letter No. 15/104/2006-ID dated 11-4-2007) subject to the terms and conditions mentioned in the annexure to this notification;

Now, therefore, in exercise of the powers conferred by clause (iii) of sub-section (4) of Section 80-IA of the said Act, the Central Government hereby notifies the undertaking being developed and being maintained and operated by M/s. Cyber Park Development & Construction Limited, Bangalore, as an industrial park for the purposes of the said clause (iii).

ANNEXURE

The terms and conditions of which the approval of the Government of India had been accorded for setting up of an industrial park by M/s. Cyber Park Development & Construction Limited, Bangalore.

1. (i) Name of the Industrial Undertaking : Cyber Park Development & Construction Limited
- (ii) Proposed location : Plot No. 76, Doddathogur, Electronic City, Bangalore Rural, Karnataka-560 100
- (iii) Area of Industrial Park : 2.73 Acres
- (iv) Proposed activities

Nature of Industrial activity with NIC code

NIC Code					Description
S.No.	Section	Division	Group	Class	
A	3	36	365	—	Manufacture of apparatus for radio broadcasting, television transmission, radar apparatus and radio remote control apparatus and apparatus for radio/line telephony and line telegraphy.
B	8	89	892	—	Data processing, software development and computer consultancy services.
C	8	89	893	—	Business and management consultancy activities.
D	8	89	894	—	Architectural and engineering and other technical consultancy activities.

- (v) Percentage of allocable area earmarked for Industrial use : 96.54%
- (vi) Percentage of allocable area earmarked for commercial use : 3.46%
- (vii) Minimum number of industrial units : 7 Units
- (viii) Total investments proposed (Amount in Rupees) : 64.16 Crores
- (ix) Investment on built up space for Industrial use (Amount in Rupees) : 45.35 Crores
- (x) Investment on Infrastructure Development including investment on built up space for industrial use (Amount in Rupees) : 59.44 Crores
- (xi) Proposed date of commencement of the Industrial Park : 1-10-2005

2. The minimum investment of infrastructure development in an Industrial Park shall not be less than 50% of the total project cost. In the case of an Industrial Park which provides built-up space for industrial use, the minimum expenditure on infrastructure development including cost of construction of industrial space, shall not be less than 60% of the total project cost.

3. Infrastructure development shall include, roads (including approach roads), water supply and sewerage, common effluent treatment facility, telecom network, generation and distribution of power, air-conditioning and such other facilities, as are for common use for industrial activity which are identifiable and are provided on commercial terms.

4. No single unit referred to in column (2) of the Table given in sub-paragraph (b) of paragraph 6 of S.O. 354(E) dated the 1st April, 2002, shall occupy more than fifty per cent of the allocable industrial area of an Industrial Park. For this purpose a unit means any separate and distinct entity for the purpose of one and more State or Central tax laws.

5. Necessary approvals, including that for foreign direct investment or non resident Indian investment by the Foreign Investment Promotion Board or Reserve Bank of India or any authority specified under any law for the time being in force, shall be taken separately as per the policy and procedures in force.

6. The tax benefits under the Act can be availed of only after the number of units indicated in para 1 (vii) of this Notification, are located in the Industrial Park.

7. M/s. Cyber Park Development & Construction Limited, Bangalore, shall continue to operate the Industrial Park during the period in which the benefit under clause (iii) of sub-section (4) of Section 80IA of the Income-tax Act, 1961 are to be availed.

8. In case the commencement of the Industrial Park is delayed by more than one year from the date indicated in Para 1 (xi) of this notification, fresh approval will be required under the Industrial Park Scheme, 2002, for availing benefits under sub-section 4 (iii) of Section 80IA of the Income Tax Act, 1961.

9. The approval will be invalid and M/s. Cyber Park Development & Construction Limited, Bangalore, shall be solely responsible for any repercussions of such invalidity, if

- (i) the application on the basis of which the approval is accorded by the Central Government contains wrong information/misinformation or some material information has not been provided in it.
- (ii) it is for the location of the industrial park for which approval has already been accorded in the name of another undertaking.

10. In case M/s. Cyber Park Development & Construction, Limited, Bangalore, transfers the operation and maintenance of the industrial park (i.e., transferor undertaking) to another undertaking (i.e., the transferee undertaking), the transferor and transferee shall jointly intimate to the Entrepreneurial Assistance Unit of the Secretariat for Industrial Assistance, Department of Industrial Policy and Promotion, Udyog Bhawan, New Delhi-11 along with a copy of the agreement executed between the transferor and transferee undertaking for the aforesaid transfer.

11. The conditions mentioned in this notification as well as those included in the Industrial Park Scheme, 2002 should be adhered to during the period for which benefits under this scheme are to be availed. The Central Government may withdraw the above approval in case M/s. Cyber Park Development & Construction Limited, Bangalore, fails to comply with any of the conditions.

12. Any amendment of the project plan without the approval of the Central Government or detection in future, or failure on the part of the applicant to disclose any material fact, will invalidate the approval of the industrial park.

[Notification No. 211/2007/F.No. 178/76/2007-ITA-I]

DEEPAK GARG, Under Secy.

नई दिल्ली, 31 जुलाई, 2007

(आयकर)

का.आ. 2288.—जबकि आयकर अधिनियम, 1961 (1961 का 43) (यहां आगे उक्त अधिनियम कहा गया है) की धारा 80 झ क की उपधारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार ने 1 अप्रैल, 1997 से शुरू होकर तथा 31 मार्च, 2002 को समाप्त होने वाली अवधि के लिये संख्या का. आ. 193(अ) दिनांक 30 मार्च, 1999 के जरिए तथा 1 अप्रैल, 1997 से शुरू होकर तथा 31 मार्च, 2006 को समाप्त अवधि के लिए संख्या का.आ. 354(अ) के जरिए भारत सरकार, वाणिज्य और उद्योग मंत्रालय (औद्योगिक नीति और संवर्धन विभाग) की अधिसूचनाओं द्वारा औद्योगिक पार्क की योजना निर्मित और अधिसूचित की है :-

और जबकि मैसर्स गोपालन एंटरप्राइजेज (इंडिया) प्राइवेट, सं. 5, रिचमंड रोड, बंगलौर-560 025 में है, वह खाता नं. 458, कुंडलाहल्ली के सी. नं. 133, महादेवपुरा, बंगलौर में एक औद्योगिक पार्क का विकास कर रहा है;

और जबकि केन्द्र सरकार ने इस अधिसूचना के अनुबंध में उल्लिखित नियम और शर्तों के अधीन वाणिज्य तथा उद्योग मंत्रालय के दिनांक 22-4-2004 के पत्र सं. 15/07/04-आई पी एंड आई डी (जैसा कि दिनांक 31-12-2004 के पत्र सं. 15/07/04-आई पी एंड आई डी द्वारा संशोधित किया गया है) के अन्तर्गत उक्त औद्योगिक पार्क अनुमोदित किया है;

अब, इसलिए, उक्त अधिनियम की धारा 80 झ क की उपधारा (4) के खंड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार एतद्वारा उक्त खंड (iii) के प्रयोजनार्थ औद्योगिक पार्क के रूप में मैसर्स गोपालन एंटरप्राइजेज (इंडिया) प्राइवेट लिमिटेड, बंगलौर द्वारा विकसित तथा अनुरक्षित एवं प्रचालित किए जा रहे उक्त उपक्रम को अधिसूचित करती है।

अनुबंध

शर्तें जिन पर भारत सरकार ने मैसर्स गोपालन एंटरप्राइजेज (इंडिया) प्राइवेट लिमिटेड, बंगलौर द्वारा औद्योगिक पार्क गठित किए जाने हेतु अनुमोदन प्रदान किया है।

- | | | | |
|--------|-----------------------------|---|--|
| 1. (i) | औद्योगिक उपक्रम का नाम | : | गोपालन एंटरप्राइजेज (इंडिया) प्राइवेट लिमिटेड |
| (ii) | प्रस्तावित स्थान | : | खाता नं. 458, कुंडलाहल्ली का सी. नं. 133, महादेवपुरा, बंगलौर |
| (iii) | औद्योगिक पार्क का क्षेत्रफल | : | 2.0 एकड़ |
| (iv) | प्रस्तावित कार्यकलाप | : | |

एन आई सी संहिता के साथ औद्योगिक कार्यकलाप का स्वरूप

एन आई सी संहिता		विवरण			
क्रम सं.	अनुभाग	प्रभाग	समूह	श्रेणी	
घ	8	89	892	—	डाटा प्रोसेसिंग, सॉफ्टवेयर डेवलपमेंट एवं कम्प्यूटर कंसल्टेंसी सर्विसिज
(v)	औद्योगिक उपयोग के लिए प्रस्तावित आबंटनीय क्षेत्र का प्रतिशत			:	73%
(vi)	वाणिज्यिक उपयोग के लिए निर्धारित भूमि का प्रतिशत			:	शून्य
(vii)	औद्योगिक यूनिटों की न्यूनतम संख्या			:	4 यूनिटें
(viii)	प्रस्तावित कुल निवेश (राशि रुपए में)			:	11.75 करोड़
(ix)	औद्योगिक उपयोग के लिए निर्मित स्थान पर निवेश (राशि रुपए में)			:	7.78 करोड़
(x)	अवसंरचनात्मक विकास पर निवेश जिसमें औद्योगिक उपयोग के लिए निर्मित स्थान पर निवेश भी शामिल है (राशि रुपए में)			:	10.28 करोड़
(xi)	औद्योगिक पार्क के आरंभ होने की प्रस्ताविक तिथि			:	31-3-2005

2. किसी औद्योगिक पार्क में अवसंरचना विकास पर न्यूनतम निवेश कुल परियोजना लागत के 50% से कम नहीं होगा। ऐसे औद्योगिक पार्क जो औद्योगिक उपयोग के लिए निर्मित स्थल प्रदान करता है, के मामले में औद्योगिक स्थल के निर्माण कार्य की लागत सहित विकास अवसंरचना पर न्यूनतम खर्च कुल परियोजना लागत के 60% से कम नहीं होगा।

3. संरचना विकास में सड़क (सम्पर्क सड़क सहित), जलापूर्ति तथा सीवरज, दूषित जल शोधन सुविधा, टेलिकॉम नेटवर्क, विद्युत उत्पादन एवं वितरण, वातानुकूलन तथा ऐसी अन्य सुविधाएं जो औद्योगिक कार्यकलाप हेतु सामान्य उपयोग के लिए हैं जो वाणिज्यिक दृष्टि से निर्धारणीय एवं प्रयुक्त हैं।

4. दिनांक 1 अप्रैल, 2002 की का.आ. 354(अ) के पैराग्राफ 6 के उप पैराग्राफ (ख) में निर्दिष्ट तालिका के कालम (2) में उल्लिखित कोई एकल इकाई किसी औद्योगिक पार्क के लिए नियत औद्योगिक क्षेत्र का 50% से अधिक हिस्सा धारित नहीं करेगी। इस प्रयोजनार्थ किसी इकाई का आशय एक या एक से अधिक राज्य अथवा केन्द्रीय कर कानून के प्रयोजन के लिए किसी अलग तथा भिन्न कम्पनी से है।

5. आवश्यक अनुमोदनों जिनमें विदेशी निवेश संवर्धन बोर्ड के द्वारा विदेशी प्रत्यक्ष निवेश अथवा अनिवासी भारतीय निवेश अथवा भारतीय रिजर्व बैंक अथवा यथा समय प्रवृत्त किसी कानून के अन्तर्गत विनिर्दिष्ट कोई प्राधिकरण भी शामिल हैं, को प्रवृत्त नीति तथा प्रक्रियाओं के अनुसार अलग से लिया जाएगा।

6. इस अधिसूचना के पैरा 1 (vii) में विनिर्दिष्ट संख्या में इकाइयों के औद्योगिक पार्क में अवस्थित होने के उपरान्त ही इस अधिनियम के अन्तर्गत कर लाभ प्राप्त हो सकते हैं।

7. मैसर्स गोपालन एंटरप्राइजेज (इंडिया) प्राईवेट लिमिटेड, बंगलौर उस अवधि के दौरान औद्योगिक पार्क का प्रचालन जारी रखेगा जिस अवधि में आयकर अधिनियम, 1961 की धारा 80 झ क की उपधारा (4) के खंड (iii) के अंतर्गत लाभ लिए जाने हैं।

8. यदि उक्त औद्योगिक पार्क के आरंभ होने में इस अधिसूचना के पैरा 1 (xi) में निर्दिष्ट तिथि से एक वर्ष से ज्यादा विलम्ब होता है तो आयकर अधिनियम, 1961 की धारा 80 झ क की उपधारा 4 (iii) के अंतर्गत लाभ प्राप्त करने के लिए औद्योगिक पार्क योजना, 2002 के अंतर्गत नया अनुमोदन प्राप्त करना अपेक्षित होगा।

9. यह अनुमोदन अवैध हो जाएगा और मैसर्स गोपालन एंटरप्राइसिज (इंडिया) प्राईवेट लिमिटेड, बंगलौर ऐसी अवैधता के किसी भी परिणाम के लिए स्वयं ही जिम्मेदार होगा, यदि

(i) आवेदन पत्र जिसके आधार पर केन्द्र सरकार द्वारा अनुमोदन प्रदान किया गया है, में गलत सूचना/सूचना अथवा कतिपय तथ्यपरक सूचना न दी गई हो।

(ii) यह उक्त औद्योगिक पार्क की अवस्थिति हेतु है जिसके लिए अनुमोदन किसी अन्य उपक्रम के नाम में पहले ही प्रदान किया गया है।

10. यदि मैसर्स गोपालन एंटरप्राइजेज (इंडिया) प्राईवेट लिमिटेड, बंगलौर (अर्थात् अन्तरणकर्ता उपक्रम) औद्योगिक पार्क का प्रचालन और अनुरक्षण किसी दूसरे उपक्रम (अर्थात् अंतरिती उपक्रम) को हस्तांतरित करेगा तो अंतरणकर्ता और अंतरिती उपर्युक्त हस्तांतरण के लिए अंतरणकर्ता और अंतरिती उपक्रम के बीच निष्पादित करार की प्रति के साथ औद्योगिक सहायता सचिवालय, औद्योगिक नीति और संवर्धन विभाग, उद्योग भवन, नई दिल्ली-11 की उद्यमशीलता सहायता यूनिट संयुक्त रूप से सूचित करेंगे।

11. इस अधिसूचना में उल्लिखित शर्तों के साथ-साथ औद्योगिक पार्क स्कीम, 2002 में शामिल उन शर्तों का अनुपालन उस अवधि के दौरान किया जाना चाहिए जिसके लिए इस स्कीम के अंतर्गत लाभ प्राप्त किए जाने हैं। केन्द्र सरकार उपर्युक्त अनुमोदन को वापस ले सकती है यदि मैसर्स गोपालन एंटरप्राइजेज (इंडिया) प्राईवेट लिमिटेड, बंगलौर औद्योगिक पार्क स्कीम, 2002 में विहित शर्तों अथवा इस अधिसूचना की किसी भी शर्त के अनुपालन में असफल रहता है।

12. केन्द्र सरकार के अनुमोद के बिना प्रोजेक्ट प्लान में किया गया कोई भी संशोधन अथवा भविष्य में पता लगना अथवा किसी ठोस तथ्य का उद्घाटन करने में आवेदक का असफल रहना, औद्योगिक पार्क के अनुमोदन को अवैध बना देगा।

[अधिसूचना सं. 212/2007/फा. सं. 178/82/2007-आ.क. नि.-I]

दीपक गर्ग, अवर सचिव

New Delhi, the 31st July, 2007

(INCOME-TAX)

S.O. 2288.—Whereas the Central Government in exercise of the powers conferred by clause (iii) of sub-section (4) of Section 80-IA of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the said Act.), has framed and notified a scheme for industrial park, by the notifications of the Government of India in the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) vide number S. O. 193(E), dated the 30th March, 1999, for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2002 and vide number S.O. 354(E) dated the 1st day of April, 2002, for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2006;

And whereas M/s. Gopalan Enterprises (India) Private Limited, No. 5 Richmond Road, Bangalore-560 025, is developing an Industrial Park at Khata No. 458, Sy. No. 133 of Kundalahalli, Mahadevapura, Bangalore;

And whereas the Central Government has approved the said Industrial Park vide Ministry of Commerce and Industry letter No. 15/07/04-IP & ID dated 22-4-2004 (as modified vide letter No. 15/07/04-IP & ID dated 31-12-2004) subject to the terms and conditions mentioned in the annexure to this notification;

Now, therefore, in exercise of the powers conferred by clause (iii) of sub-section (4) of section 80-1A of the said Act, the Central Government hereby notifies the undertaking being developed and being maintained and operated by M/s. Gopalan Enterprises (India) Private Limited, Bangalore, as an industrial park for the purposes of the said clause, (iii).

ANNEXURE

The terms and conditions of which the approval of the Government of India has been accorded for setting up of an industrial park by M/s. Gopalan Enterprises (India) Private Limited, Bangalore.

1. (i) Name of the Industrial Undertaking : Gopalan Enterprises (India) Private Limited
- (ii) Proposed location : Khata No. 458, Sy. No. 133 of kundalahalli, Mahadevapura, Bangalore.

(iii)	Area of Industrial Park	:	2.0 Acres	
(iv)	Proposed activities			
Nature of Industrial activity with NIC code				
NIC Code				
Description				
S. No.	Section	Division	Group	Class
D	8	89	892	—
				Data processing, software development and computer consultancy services.
(v)	Percentage of allocable area earmarked for Industrial use	:	73%	
(vi)	Percentage of allocable area earmarked for commercial use	:	Nil	
(vii)	Minimum number of industrial units	:	4 Units	
(viii)	Total investments proposed (Amount in Rupees)	:	11.75 Crores	
(ix)	Investment of built up space for Industrial use (Amount in Rupees)	:	7.78 Crores	
(x)	Investment on Infrastructure Development including investment on built up space for industrial use (Amount in Rupees)	:	10.28 Crores	
(xi)	Proposed date of commencement of the Industrial Park	:	31-3-2005	

2. The minimum investment on infrastructure development in an Industrial Park shall not be less than 50% of the total project cost. In the case of an Industrial Park which provides built-up space for industrial use, the minimum expenditure on infrastructure development including cost of construction of industrial space, shall not be less than 60% of the total project cost.

3. Infrastructure development shall include, roads (including approach roads), water supply and sewerage, common effluent treatment facility, telecom network, generation and distribution of power, air-conditioning and such other facilities, as are for common use for industrial activity which are identifiable and are provided on commercial terms.

4. No single unit referred to in column 20 of the Table given in sub-paragraph (b) of paragraph 6 of S.O. 354(E) dated the 1st April, 2002, shall occupy more than fifty percent of the allocable industrial area of an Industrial Park. For this purpose a unit means any separate and distinct entity for the purpose of one and more state or Central tax laws.

5. Necessary approvals, including that for foreign direct investment or non resident Indian investment by the Foreign Investment Promotion Board or Reserve Bank of India or any authority specified under any law for the time being in force, shall be taken separately as per the policy and procedures in force.

6. The tax benefits under the Act can be availed of only after the number of units indicated in para 1 (vii) of this Notification, are located in the Industrial Park.

7. M/s. Gopalan Enterprises (India) Private Limited, Bangalore, shall continue to operate the Industrial Park during the period in which the benefits under clause (iii) of sub-section (4) of Section 80IA of the Income-tax Act, 1961 are to be availed.

8. In case the commencement of the Industrial Park is delayed by more than one year from the date indicated in Para 1 (xi) of this notification, fresh approval will be required under the Industrial Park Scheme, 2002, for availing benefits under sub-section 4 (iii) of Section 80IA of the income Tax Act, 1961.

9. The approval will be invalid and M/s. Gopalan Enterprises (India) Private Limited, Bangalore, shall be solely responsible for any repercussions of such invalidity, if

- (i) the application on the basis of which the approval is accorded by the Central Government contains wrong information/misinformation or some material information has not been provided in it.
- (ii) it is for the location of the industrial park for which approval has already been accorded in the name of another undertaking.

10. In case M/s. Gopalan Enterprises (India) Private Limited, Bangalore, transfers the operation and maintenance of the industrial park (i.e., transferor undertaking) to another undertaking (i.e., the transferee undertaking), the transferor and transferee shall jointly intimate to the Entrepreneurial Assistance Unit of the Secretariat for Industrial Assistance, Department of Industrial Policy and Promotion, Udyog Bhawan, New Delhi-11 along with a copy of the agreement executed between the transferor and transferee undertaking for the aforesaid transfer.

11. The conditions mentioned in this notification as well as those included in the Industrial Park Scheme, 2002 should be adhered to during the period for which benefits under this scheme are to be availed. The Central Government may withdraw the above approval in case M/s. Gopalan Enterprises (India) Private Limited, Bangalore, fails to comply with any of the conditions.

12. Any amendment of the project plan without the approval of the Central Government or detection in future, or failure on the part of the applicant to disclose any material fact, will invalidate the approval of the industrial park.

[Notification No. 212/2007/F.No. 178/82/2007-ITA-I]

DEEPAK GARG, Under Secy.

परमाणु ऊर्जा विभाग

आदेश

मुंबई, 26 जुलाई, 2007

का.आ. 2289.-परमाणु ऊर्जा अधिनियम, 1962 (1962 का 33) की धारा 27 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार एतद्वारा यह निदेश देती है कि इस आदेश के साथ संलग्न अनुसूची के कॉलम (2) में विनिर्दिष्ट क्षेत्रों, जो कि निषिद्ध क्षेत्र हैं, के संबंध में उक्त अधिनियम की धारा 19 के द्वारा इसे प्रदत्त शक्तियां उक्त अनुसूची के कॉलम (3) में संगत प्रविष्टियों में उल्लिखित सभी अथवा उनमें से किसी भी अधिकारी अथवा प्राधिकारी द्वारा भी प्रयोग की जा सकेंगी।

अनुसूची

क्र. सं.	निषिद्ध क्षेत्रों के नाम	अधिकारी अथवा प्राधिकारी का पदनाम
(1)	(2)	(3)
1.	"जिकोनियम काम्प्लेक्स, पलयकयल" श्रीवैकुण्ठ तालुक, तूतीकोरिन जिला, तमिलनाडु 628152. पूर्व में : मन्नार की खाड़ी पश्चिम में : 227, 253, 259, 260, 261, 262, और 510. उत्तर में : 277, 284, 288 और 289 दक्षिण में : 317, 547, 550, 551 और 552	(i) परियोजना निदेशक, जिकोनियम काम्प्लेक्स और (ii) प्रबंधक, जिकोनियम काम्प्लेक्स
2.	"जिकोनियम काम्प्लेक्स, पलयकयल" का टाऊनशिप क्षेत्र श्रीवैकुण्ठ तालुक, तूतीकोरिन जिला, तमिलनाडु 628152. पूर्व में : 213, 221, 222, 223, 224 और 349. पश्चिम में : 180, 181, 193, 194, 196 और तूतीकोरिन-तिरुचेनदुर राजमार्ग उत्तर में : 228, 526, 527 और 528 दक्षिण में : 349, 358, 359, 361 और 383	(i) परियोजना निदेशक, जिकोनियम काम्प्लेक्स और (ii) प्रबंधक, जिकोनियम काम्प्लेक्स
3.	"जिकोनियम काम्प्लेक्स, पलयकयल" को जाने वाला मुख्य पहुँच मार्ग श्रीवैकुण्ठ तालुक, तूतीकोरिन जिला, तमिलनाडु 628152.	(i) परियोजना निदेशक, जिकोनियम काम्प्लेक्स और (ii) प्रबंधक, जिकोनियम काम्प्लेक्स

(1)	(2)	(3)
	पूर्व में : 264	
	पश्चिम में : तूतीकोरिन-तिरुचेनदुर राजमार्ग	
	उत्तर में : 229, 238, 240, 244, 251, 254 और 262	
	दक्षिण में : 228, 240, 242, 243, 244, 252, 253 और 528.	
4.	“जिकॉनियम काम्प्लेक्स, पलयकयल” के टाउनशिप क्षेत्र को जाने वाला पहुँच मार्ग श्रीवैकुण्ठ तालुक, तूतीकोरिन जिला, तमिलनाडु 628152.	(i) परियोजना निदेशक, जिकॉनियम काम्प्लेक्स और (ii) प्रबंधक, जिकॉनियम काम्प्लेक्स
	पूर्व में : 243, 244, 529 और 553	
	पश्चिम में : 243 और 526	
	उत्तर में : 238,	
	दक्षिण में : 212	

[फा. सं. एईए/19(5)/2005-ईआर/2140]

डॉ. नदिनी अय्यर कृष्णा, संयुक्त सचिव

DEPARTMENT OF ATOMIC ENERGY

ORDER

Mumbai, the 26th July, 2007

S.O. 2289.—In exercise of the powers conferred by Section 27 of the Atomic Energy Act, 1962 (33 of 1962), the Central Government hereby directs that the powers conferred on it by Section 19 of the said Act shall, in respect of the areas specified in column (2) of the Schedule annexed hereto, being prohibited areas, be exercisable also by all or any of the officers or authorities mentioned in the corresponding entries in column (3) of the said Schedule.

SCHEDULE

Sl.No.	Name of the prohibited areas	Designation of the Officer or Authority
(1)	(2)	(3)
1.	“ZIRCONIUM COMPLEX, PAZHAYAKAYAL”, Srivaikundam Taluk, Tuticorin District, Tamil Nadu-628 152 On the East : Gulf of Mannar On the West : 227, 253, 259, 260, 261, 262 & 510. On the North : 277, 284, 288 & 289 On the South : 317, 547, 550, 551 & 552	(i) Project Director, Zirconium Complex, and (ii) Manager, Zirconium Complex
2.	Township area of “ZIRCONIUM COMPLEX, PAZHAYAKAYAL”, Srivaikundam Taluk, Tuticorin District, Tamil Nadu-628 152 On the East : 213, 221, 222, 223, 224 & 349 On the West : 180, 181, 193, 194, 196 & Tuticorin-Tiruchendur Highway On the North : 228, 526, 527 & 528 On the South : 349, 358, 359, 361 & 383	(i) Project Director, Zirconium Complex, and (ii) Manager, Zirconium Complex
3.	Main approach Road leading to “ZIRCONIUM COMPLEX, PAZHAYAKAYAL”, Srivaikundam Taluk, Tuticorin District, Tamil Nadu-628 152 On the East : 264 On the West : Tuticorin-Tiruchendur Highway On the North : 229, 238, 240, 244, 251, 254 & 262 On the South : 228, 240, 242, 243, 244, 252, 253 & 528.	(i) Project Director, Zirconium Complex, and (ii) Manager, Zirconium Complex

(1)	(2)	(3)
4.	Approach Road leading to Township Area of "ZIRCONIUM COMPLEX, PAZHAYAKAYAL", Srivaikundam Taluk, Tuticorin District, Tamil Nadu-628 152 On the East : 243, 244, 529 & 553 On the West : 243 & 526 On the North : 238 On the South : 212	(i) Project Director, Zirconium Complex, and (ii) Manager, Zirconium Complex
[F.No. AEA/19(5)/2005-ER/2140] DR. NANDHINI IYER KRISHNA, Jt. Secy.		

स्वास्थ्य और परिवार कल्याण मंत्रालय

(स्वास्थ्य विभाग)

नई दिल्ली, 27 जून, 2007

का.आ. 2290.- भारतीय आयुर्विज्ञान परिषद् अधिनियम, 1956 (1956 का 102) की धारा 11 की उप धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार भारतीय आयुर्विज्ञान परिषद् से परामर्श करने के बाद एतद्वारा उक्त अधिनियम की प्रथम अनुसूची में निम्नलिखित और संशोधन करती है, अर्थात्-

उक्त अनुसूची में-

- (क) "मद्रास विश्वविद्यालय" और द तमिलनाडु डा. एम.जी.आर. विश्वविद्यालय के सामने 'मान्यता प्राप्त आयुर्विज्ञान अर्हता' [इसके बाद स्तंभ (2) के रूप में संदर्भित] शीर्ष के अन्तर्गत अन्तिम प्रविष्टि और 'पंजीकरण के लिए संक्षेपण' [इसके बाद स्तंभ (3) के रूप में संदर्भित] शीर्ष के अन्तर्गत उससे संबद्ध प्रविष्टि के बाद, निम्नलिखित रखा जाएगा, अर्थात् :-

2	3
"डॉक्टर ऑफ मेडिसिन (शरीर क्रिया विज्ञान)	एम.डी. (शरीर क्रिया विज्ञान) (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी यदि यह स्टेनले मेडिकल कालेज, चेन्नई द्वारा सितम्बर, 2004 में अथवा उसके बाद प्रदान की गई हो)
मास्टर ऑफ सर्जरी (सामान्य शल्य चिकित्सा)	एम.एस. (सामान्य शल्य चिकित्सा) (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी यदि यह चेंगलपट्टु मेडिकल कालेज, चेंगलपट्टु द्वारा जुलाई, 1997 में अथवा उसके बाद प्रदान की गई हो)
डॉक्टर ऑफ मेडिसिन (जनरल मेडिसिन)	एम.डी. (मेडिसिन) (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी यदि यह गवर्नमेंट मोहन कुमारमंगलम मेडिकल कालेज, सालेम द्वारा अगस्त, 2005 में अथवा उसके बाद प्रदान की गई हो)
मास्टर ऑफ सर्जरी (नेत्र विज्ञान)	एम.एस. (नेत्र विज्ञान) (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी यदि यह कोयम्बटूर मेडिकल कालेज, कोयम्बटूर द्वारा अगस्त, 2005 में अथवा उसके बाद प्रदान की गई हो)
नेत्र विज्ञान में डिप्लोमा	डी.ओ. (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी यदि यह कोयम्बटूर मेडिकल कालेज, कोयम्बटूर द्वारा अगस्त, 2005 में अथवा उसके बाद प्रदान की गई हो)
(ख) "राजीव गांधी स्वास्थ्य विज्ञान विश्वविद्यालय बंगलौर" के सामने 'मान्यता प्राप्त आयुर्विज्ञान अर्हता' [इसके बाद स्तंभ (2) के रूप में संदर्भित] शीर्ष के अन्तर्गत अन्तिम प्रविष्टि और 'पंजीकरण के लिए संक्षेपण' [इसके बाद स्तंभ (3) के रूप में संदर्भित] शीर्ष के अन्तर्गत उससे संबद्ध प्रविष्टि के बाद, निम्नलिखित रखा जाएगा, अर्थात् :-	
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डॉक्टर ऑफ मेडिसिन (रेडियो थिरेपी)	एम.डी. (रेडियो थिरेपी) (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी यदि यह एम.एस. रमैया मेडिकल कालेज, बंगलौर द्वारा अप्रैल, 2005 में अथवा उसके बाद प्रदान की गई हो)

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प्रसूति एवं स्त्री रोग विज्ञान में डिप्लोमा	डी.जी.ओ. (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी यदि यह एम.एस. रमैय्या मेडिकल कालेज, बंगलौर द्वारा मार्च, 2005 में अथवा उसके बाद प्रदान की गई हो)
मास्टर ऑफ सर्जरी (अस्थि विज्ञान) और अस्थि विज्ञान में डिप्लोमा	एम.एस. (अस्थि विज्ञान) और अस्थि विज्ञान में डिप्लोमा (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी यदि यह एम.आर. मेडिकल कालेज, गुलबर्गा द्वारा जून, 2005 में अथवा उसके बाद प्रदान की गई हो)
डॉक्टर ऑफ मेडिसिन (सामान्य चिकित्सा)	एम.डी. (सामान्य चिकित्सा) (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी यदि यह एम.आर. मेडिकल कालेज, गुलबर्गा द्वारा जून, 2005 में अथवा उसके बाद प्रदान की गई हो)
नैदानिक विकृति विज्ञान में डिप्लोमा	डी. सी. पी. (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी यदि यह एम.आर. मेडिकल कालेज, गुलबर्गा द्वारा सितम्बर, 1998 में अथवा उसके बाद प्रदान की गई हो)
डॉक्टर ऑफ मेडिसिन (संवेदनाहरण)	एम.डी. (संवेदनाहरण) (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी यदि यह श्री सिद्धार्थ मेडिकल कालेज, तुमकुर द्वारा अप्रैल, 2005 में अथवा उसके बाद प्रदान की गई हो)
डॉक्टर ऑफ मेडिसिन (न्यायिक चिकित्सा)	एम.डी. (न्यायिक चिकित्सा) (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी यदि यह कैप गोडा आयुर्विज्ञान संस्थान, बंगलौर द्वारा मई, 2005 में अथवा उसके बाद प्रदान की गई हो)
डॉक्टर ऑफ मेडिसिन (कार्डियोलॉजी)	एम.डी. (कार्डियोलॉजी) (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी यदि यह सेंट जॉन मेडिकल कालेज, बंगलौर द्वारा मार्च, 2005 में अथवा उसके बाद प्रदान की गई हो)
डॉक्टर ऑफ मेडिसिन (मनश्चिकित्सा)	एम.डी. (मनश्चिकित्सा) (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी यदि यह सेंट जॉन मेडिकल कालेज, बंगलौर द्वारा अप्रैल, 2005 में अथवा उसके बाद प्रदान की गई हो)
संवेदनाहरण में डिप्लोमा	डी. ए. (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी यदि यह अल-अमीन मेडिकल कालेज, बीजापुर द्वारा जून, 2005 में अथवा उसके बाद प्रदान की गई हो)

(ग) "दिल्ली विश्वविद्यालय" के सामने 'मान्यता प्राप्त आयुर्विज्ञान अर्हता' [इसके बाद स्तंभ (2) के रूप में संदर्भित] शीर्ष के अन्तर्गत अंतिम प्रविष्टि और 'पंजीकरण के लिए संक्षेपण' [इसके बाद स्तंभ (3) के रूप में संदर्भित] शीर्ष के अन्तर्गत उससे संबद्ध प्रविष्टि के बाद, निम्नलिखित रखा जाएगा, अर्थात् :-

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डॉक्टर ऑफ मेडिसिन (न्यायिक चिकित्सा)	एम.डी. (न्यायिक चिकित्सा) (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी यदि यह यूनिवर्सिटी कालेज ऑफ मेडिकल साइंसेज, दिल्ली द्वारा जून, 1987 में अथवा उसके बाद प्रदान की गई हो)
डॉक्टर ऑफ सर्जरी (अस्थि विज्ञान)	एम.एस. (अस्थि विज्ञान) (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी यदि यह डा. राम मनोहर लोहिया अस्पताल, नई दिल्ली द्वारा 1986 में अथवा उसके बाद प्रदान की गई हो)
शिशु स्वास्थ्य में डिप्लोमा	डी.सी.एच. (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी यदि यह डा. राम मनोहर लोहिया, अस्पताल, नई दिल्ली द्वारा 1968 में अथवा उसके बाद प्रदान की गई हो)

नेत्र विज्ञान में डिप्लोमा	डी.ओ. (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी यदि यह डा. राम मनोहर लोहिया, अस्पताल, नई दिल्ली द्वारा अप्रैल, 2005 में अथवा उसके बाद प्रदान की गई हो)
मास्टर ऑफ सर्जरी (सामान्य सर्जरी)	एम.एस. (सामान्य सर्जरी) (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी यदि यह डा. राम मनोहर लोहिया, अस्पताल, नई दिल्ली द्वारा 1969 में अथवा उसके बाद प्रदान की गई हो)
डॉक्टर ऑफ मेडिसिन (जनरल मेडिसिन)	एम.डी. (जनरल मेडिसिन) (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी यदि यह डा. राम मनोहर लोहिया, अस्पताल, नई दिल्ली द्वारा 1966 में अथवा उसके बाद प्रदान की गई हो)
डॉक्टर ऑफ मेडिसिन (रेडियो डायग्नोसिस)	एम.डी. (रेडियो डायग्नोसिस) (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी यदि यह डा. राम मनोहर लोहिया, अस्पताल, नई दिल्ली द्वारा 1971 में अथवा उसके बाद प्रदान की गई हो)
रतिज रोग विज्ञान और त्वचा विज्ञान डिप्लोमा	डी.वी.डी. (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी यदि यह डा. राम मनोहर लोहिया, अस्पताल, नई दिल्ली द्वारा 1969 में अथवा उसके बाद प्रदान की गई हो)
त्वचा विज्ञान, रतिज रोग विज्ञान एवं कुष्ठ में डिप्लोमा	डी.डी.वी.एल. (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी यदि यह डा. राम मनोहर लोहिया, अस्पताल, नई दिल्ली द्वारा 1969 में अथवा उसके बाद प्रदान की गई हो)
डॉक्टर ऑफ मेडिसिन (संवेदनाहरण)	एम.डी. (संवेदनाहरण) (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी यदि यह डा. राम मनोहर लोहिया, अस्पताल, नई दिल्ली द्वारा 1968 में अथवा उसके बाद प्रदान की गई हो)
मास्टर ऑफ सर्जरी (सामान्य सर्जरी)	एम.एस. (सामान्य सर्जरी) (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी यदि यह सेना अस्पताल, दिल्ली छावनी द्वारा 1966 में अथवा उसके बाद प्रदान की गई हो)
लेरिंगोलाजी और ओटोलाजी में डिप्लोमा	डी.एल.ओ. (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह सेना अस्पताल, दिल्ली छावनी, दिल्ली द्वारा 1983 में अथवा उसके बाद प्रदान की गई हो)
मास्टर ऑफ सर्जरी (अस्थि विज्ञान)	एम.डी. (अस्थि विज्ञान) (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह लेडीहाडिंग मेडिकल कालेज, नई दिल्ली द्वारा 1977 में अथवा उसके बाद प्रदान की गई हो)
डाक्टर आफ मेडिसिन (संवेदनाहरण)	एम.डी. (संवेदनाहरण) (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह सफदरजंग अस्पताल, नई दिल्ली द्वारा 1961 में अथवा उसके बाद प्रदान की गई हो)
संवेदनाहरण विज्ञान में डिप्लोमा	डी. ए. (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह सफदरजंग अस्पताल, नई दिल्ली द्वारा 1961 में अथवा उसके बाद प्रदान की गई हो)
लेरिंगोलाजी और ओटोलाजी में डिप्लोमा	डी.एल.ओ. (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह सफदरजंग अस्पताल, नई दिल्ली द्वारा 1965 में अथवा उसके बाद प्रदान की गई हो)
शिशु स्वास्थ्य में डिप्लोमा	डी.सी.एच. (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह सफदरजंग अस्पताल, नई दिल्ली द्वारा 1962 में अथवा उसके बाद प्रदान की गई हो)

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रतिज रोग विज्ञान और त्वचा विज्ञान में डिप्लोमा	डी.वी.डी. (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह सफदरजंग अस्पताल, नई दिल्ली द्वारा 1968 में अथवा उसके बाद प्रदान की गई हो)
त्वचा विज्ञान, रतिज रोग विज्ञान एवं कुष्ठ में डिप्लोमा	डी.डी.वी. एल. (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह सफदरजंग अस्पताल, नई दिल्ली द्वारा 1968 में अथवा उसके बाद प्रदान की गई हो)
संवेदनाहरण विज्ञान में डिप्लोमा	डी. ए. (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह हिंदूराव अस्पताल, दिल्ली द्वारा 1968 में अथवा उसके बाद प्रदान की गई हो)
(घ) “नागपुर विश्वविद्यालय” के सामने ‘मान्यताप्राप्त आयुर्विज्ञान अर्हता’ [इसके बाद स्तंभ (2) के रूप में संदर्भित] शीर्ष के अन्तर्गत अन्तिम प्रविष्टि और ‘पंजीकरण के लिए संक्षेपण’ [इसके बाद स्तंभ (3) के रूप में संदर्भित] शीर्ष के अन्तर्गत उससे संबद्ध प्रविष्टि के बाद, निम्नलिखित रखा जाएगा, अर्थात् :-	
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प्रसूति और स्त्री रोग विज्ञान में डिप्लोमा	डी. जी. ओ. (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह जे.एल.एन मेडिकल कालेज, स्वांगी, वर्धा द्वारा अप्रैल, 2005 में अथवा उसके बाद प्रदान की गई हो)
डॉक्टर ऑफ मेडिसिन (सामान्य चिकित्सा)	एम.डी. (सामान्य चिकित्सा) (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह स्टेनले जे.एल.एन मेडिकल कालेज, स्वांगी, वर्धा द्वारा नवम्बर, 2003 में अथवा उसके बाद प्रदान की गई हो)
(ङ) “पंजाब विश्वविद्यालय” के सामने ‘मान्यताप्राप्त आयुर्विज्ञान अर्हता’ [इसके बाद स्तंभ (2) के रूप में संदर्भित] शीर्ष के अन्तर्गत अन्तिम प्रविष्टि और ‘पंजीकरण के लिए संक्षेपण’ [इसके बाद स्तंभ (3) के रूप में संदर्भित] शीर्ष के अन्तर्गत उससे संबद्ध प्रविष्टि के बाद, निम्नलिखित रखा जाएगा, अर्थात् :-	
2	3
मास्टर ऑफ सर्जरी (नेत्र विज्ञान)	एम. एस. (नेत्र विज्ञान) (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी यदि यह क्रिश्चियन मेडिकल कालेज, लुधियाना द्वारा दिसम्बर, 1985 से दिसम्बर, 1999 में अथवा उसके बाद प्रदान की गई हो)
डॉक्टर ऑफ मेडिसिन (शरीर क्रिया विज्ञान)	एम. डी. (शरीर क्रिया विज्ञान) (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी यदि यह क्रिश्चियन मेडिकल कालेज, लुधियाना द्वारा 1996 में अथवा उसके बाद प्रदान की गई हो)
डॉक्टर ऑफ मेडिसिन (शरीर क्रिया विज्ञान)	एम. डी. (शरीर क्रिया विज्ञान) (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी यदि यह दयानंद क्रिश्चियन मेडिकल कालेज, लुधियाना द्वारा 1984 से 1999 में अथवा उसके बाद प्रदान की गई हो)
(च) “बाबा फरीद यूनिवर्सिटी ऑफ हेल्थ साइंसेस, फरीदकोट” के सामने, ‘मान्यता प्राप्त चिकित्सा अर्हता’ [इसके पश्चात् स्तंभ (2) के रूप में संदर्भित] के अन्तर्गत के सामने, अन्तिम प्रविष्टि तथा शीर्षक ‘पंजीकरण के लिए संक्षेपण’ [इसके बाद स्तंभ (3) के रूप में संदर्भित] के अधीन उससे संबंधित प्रविष्टि के बाद, निम्नलिखित रखा जाएगा, अर्थात् :-	
2	3
मास्टर ऑफ सर्जरी (नेत्र विज्ञान)	एम. एस. (नेत्र विज्ञान) (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह क्रिश्चियन मेडिकल कालेज, लुधियाना द्वारा जनवरी, 2000 में अथवा उसके बाद प्रदान की गई हो)

2	3
डाक्टर ऑफ मेडिसिन (शरीर क्रिया विज्ञान)	एम. डी. (शरीर क्रिया विज्ञान) (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह दयानंद क्रिश्चियन मेडिकल कालेज, लुधियाना द्वारा 2000 में अथवा उसके बाद प्रदान की गई हो)

(छ) "गुवाहाटी विश्वविद्यालय और असम विश्वविद्यालय" के सामने 'मान्यता प्राप्त चिकित्सा अर्हता' [इसके पश्चात् स्तंभ (2) के रूप में संदर्भित] के अन्तर्गत अन्तिम प्रविष्टि तथा शीर्षक 'पंजीकरण के लिए संक्षेपण' [इसके बाद स्तंभ (3) के रूप में संदर्भित] के अधीन उससे संबंधित प्रविष्टि के बाद, निम्नलिखित जोड़ा जाएगा, अर्थात् :-

2	3
मास्टर ऑफ सर्जरी (ओटोरिनोलरीनोलोजी)	एम. एस. (ई. एन. टी.) (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह सिल्वर मेडिकल कालेज, सिल्वर द्वारा 1988 में अथवा उसके बाद प्रदान की गई हो)
मास्टर ऑफ सर्जरी (जनरल सर्जरी)	एम.एस. (जनरल सर्जरी) (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह सिल्वर मेडिकल कालेज, सिल्वर द्वारा 1988 में अथवा उसके बाद प्रदान की गई हो)
मास्टर ऑफ सर्जरी (नेत्र विज्ञान)	एम.एस. (नेत्र विज्ञान) (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह सिल्वर मेडिकल कालेज, सिल्वर द्वारा 1988 में अथवा उसके बाद प्रदान की गई हो)
नेत्र विज्ञान में डिप्लोमा	डी.ओ. (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह सिल्वर मेडिकल कालेज, सिल्वर द्वारा 1988 में अथवा उसके बाद प्रदान की गई हो)

(ज) "राजस्थान विश्वविद्यालय" के सामने 'मान्यताप्राप्त चिकित्सा अर्हता' [इसके पश्चात् स्तंभ (2) के रूप में उल्लिखित] के अन्तर्गत अन्तिम प्रविष्टि तथा शीर्षक 'पंजीकरण के लिए संक्षेपण' [इसके बाद स्तंभ (3) के रूप में उल्लिखित] के अन्तर्गत उससे संबंधित प्रविष्टि के बाद, निम्नलिखित रखा जाएगा, अर्थात् :-

2	3
डाक्टर ऑफ मेडिसिन (शरीर क्रिया विज्ञान)	एम. डी. (शरीर क्रिया विज्ञान) (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह डा. एस. एन. मेडिकल कालेज, जोधपुर द्वारा 1977 में अथवा उसके बाद प्रदान की गई हो)
डिप्लोमा इन चाइल्ड हेल्थ	डी.सी.एच. (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह एस.एम.एस. मेडिकल कालेज, जयपुर द्वारा 1987 में अथवा उसके बाद प्रदान की गई हो)
मास्टर ऑफ सर्जरी (विकलांग विज्ञान)	एम.एस. (विकलांग विज्ञान) (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि जे.एल.एन, मेडिकल कालेज, अजमेर द्वारा 1983 में अथवा उसके बाद प्रदान की गई हो)

(झ) "कलकत्ता विश्वविद्यालय" के सामने, 'मान्यता प्राप्त चिकित्सा अर्हता' [इसके पश्चात् स्तंभ (2) के रूप में उल्लिखित] के अन्तर्गत अन्तिम प्रविष्टि तथा शीर्षक 'पंजीकरण के लिए संक्षेपण' [इसके पश्चात् स्तंभ (3) के रूप में उल्लिखित] के अन्तर्गत उससे संबंधित प्रविष्टि के बाद, निम्नलिखित जोड़ा जाएगा, अर्थात् :-

2	3
डाक्टर ऑफ मेडिसिन (क्षय रोग एवं श्वसनी रोग)	एम. डी. (क्षय रोग एवं श्वसनी रोग) (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी यदि यह एन.आर.एस. मेडिकल कालेज, कोलकाता द्वारा 1975 में अथवा उसके बाद प्रदान की गई हो)

- (ज) "सौराष्ट्र विश्वविद्यालय" के सामने, 'मान्यता प्राप्त चिकित्सा अर्हता' [इसके पश्चात् स्तंभ (2) के रूप में उल्लिखित] के अन्तर्गत अन्तिम प्रविष्टि तथा शीर्षक 'पंजीकरण के लिए संक्षेपण' [इसके पश्चात् स्तंभ (3) के रूप में उल्लिखित] के अन्तर्गत उससे संबंधित प्रविष्टि के बाद, निम्नलिखित जोड़ा जाएगा, अर्थात् :-

2	3
डाक्टर ऑफ मेडिसिन (जनरल मेडिसिन)	एम. डी. (जनरल मेडिसिन) (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी यदि यह पंडित दीनदयाल उपाध्याय मेडिकल कालेज, राजकोट द्वारा दिसम्बर, 2004 में अथवा उसके बाद प्रदान की गई हो)

- (ट) "गुजरात विश्वविद्यालय" के सामने, 'मान्यता प्राप्त चिकित्सा अर्हता' [इसके पश्चात् स्तंभ (2) के रूप में उल्लिखित] के अन्तर्गत अन्तिम प्रविष्टि तथा शीर्षक 'पंजीकरण के लिए संक्षेपण' [इसके पश्चात् स्तंभ (3) के रूप में उल्लिखित] के अन्तर्गत उससे संबंधित प्रविष्टि के बाद, निम्नलिखित जोड़ा जाएगा, अर्थात् :-

2	3
डाक्टर ऑफ मेडिसिन (संवेदनाहरण विज्ञान)	एम. डी. (संवेदनाहरण विज्ञान) (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी यदि यह श्रीमती एन.एच.एल. म्यूनिसपल मेडिकल कालेज, अहमदाबाद द्वारा 1967 में अथवा उसके बाद प्रदान की गई हो)
संवेदनाहरण में डिप्लोमा	डी.ए. (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी यदि यह श्रीमती एन.एच.एल. म्यूनिसपल मेडिकल कालेज, अहमदाबाद द्वारा 1966 में अथवा उसके बाद प्रदान की गई हो)
डाक्टर ऑफ मेडिसिन (शरीर क्रिया विज्ञान)	एम. डी. (शरीर क्रिया विज्ञान) (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी यदि यह श्रीमती एन.एच.एल. म्यूनिसपल मेडिकल कालेज, अहमदाबाद द्वारा 1973 में अथवा उसके बाद प्रदान की गई हो)

- (ठ) "डा. बाबा साहेब अम्बेडकर मराठवाड़ा विश्वविद्यालय" के सामने, 'मान्यता प्राप्त चिकित्सा अर्हता' [इसके पश्चात् स्तंभ (2) के रूप में उल्लिखित] के अन्तर्गत अन्तिम प्रविष्टि तथा शीर्षक 'पंजीकरण के लिए संक्षेपण' [इसके पश्चात् स्तंभ (3) के रूप में उल्लिखित] के अन्तर्गत उससे संबंधित प्रविष्टि के बाद, निम्नलिखित जोड़ा जाएगा, अर्थात् :-

2	3
डाक्टर ऑफ मेडिसिन (प्रसूति एवं स्त्री रोग विज्ञान)	एम. डी. (प्रसूति एवं स्त्री रोग विज्ञान) (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी यदि यह एम.जी.एम. मेडिकल कालेज, औरंगाबाद द्वारा अगस्त, 2005 में अथवा उसके बाद प्रदान की गई हो)

[सं. यू.-12012/6/2006-एम ई (पी-II)]

एस. के. मिश्रा, अवर सचिव

MINISTRY OF HEALTH AND FAMILY WELFARE

(Department of Health)

New Delhi, the 27th June, 2007

S.O. 2290.—In exercise of the powers conferred by sub-section (2) of the section 11 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government, after consulting the Medical Council of India, hereby makes the following further amendments in the First Schedule to the said Act, namely :—

In the said Schedule —

- (a) against "Madras University" and "The Tamil Nadu Dr. M.G.R. University", under the heading 'Recognized Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely :—

2	3
"Doctor of Medicine (Physiology)	M.D. (Physiology) (This shall be a recognized medical qualification when granted by Stanley Medical College, Chennai on or after Spt., 2004)

2	3
Master of Surgery (General Surgery)	M.S. (General Surgery) (This shall be a recognized medical qualification when granted by Chengalpattu Medical College, Chengalpattu on or after July, 1997)
Doctor of Medicine (General Medicine)	M.D. (Medicine) (This shall be a recognized medical qualification when granted by Govt. Mohan Kumarmangalam Medical College, Salem on or after August, 2005)
Doctor of Surgery (Ophthalmology)	M.S. (Ophthalmology) (This shall be a recognized medical qualification when granted by Coimbatore Medical College, Coimbatore on or after August, 2005)
Diploma of Ophthalmology	D.O. (This shall be a recognized medical qualification when granted by Coimbatore Medical College, Coimbatore on or after August, 2005)
(b) against "Rajiv Gandhi University of Health Sciences, Bangalore", under the heading 'Recognized Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely :—	

2	3
Doctor of Medicine (Radiotherapy)	M.D. (Radiotherapy) (This shall be a recognized medical qualification when granted by M. S. Ramaiah Medical College, Bangalore on or after April., 2005)
Diploma in Gynaecology and Obstetrics	D.G.O. (This shall be a recognized medical qualification when granted by M. S. Ramaiah Medical College, Bangalore on or after March., 2005)
Master of Surgery (Orthopedics) and Diploma in Orthopedics	M.S. (Orthopedics) and D. Orthopedics (This shall be a recognized medical qualification when granted by M. R. Medical College, Gulbarga on or after June., 2005)
Doctor of Medicine (General Medicine)	M.D. (General Medicine) (This shall be a recognized medical qualification when granted by M. R. Medical College, Gulbarga on or after June, 2005)
Diploma in Clinical Pathology	D.C.P. (This shall be a recognized medical qualification when granted by M. R. Medical College, Gulbarga on or after Sept., 1998)
Doctor of Medicine (Anaesthesia)	M.D. (Anaesthesia) (This shall be a recognized medical qualification when granted by Sree Sidhartha Medical College, Tumkur on or after April, 2005)
Doctor of Medicine (Forensic Medicine)	M.D. (Forensic Medicine) (This shall be a recognized medical qualification when granted by Kempegowda Instt. of Medical Sciences, Bangalore on or after May, 2005)
Doctor of Medicine (Cardiology)	D.M. (Cardiology) This shall be a recognized medical qualification when granted by St. John's Medical College, Bangalore on or after March, 2005)
Doctor of Medicine (Psychiatry)	M.D. (Psychiatry) (This shall be a recognized medical qualification when granted by St. John's Medical College, Bangalore on or after April, 2005)
Diploma Anaesthesia	D.A. (This shall be a recognized medical qualification when granted by Al Ameen Medical College, Bijapur on or after June, 2005)
(c) against "Delhi University", under the heading 'Recognized Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely :—	

2

3

Doctor of Medicine (Forensic Medicine)	M.D. (Forensic Medicine) (This shall be a recognized medical qualification when granted by University College of Medical Sciences, Delhi on or after June, 1987)
Master of Surgery (Orthopedics)	M.S. (Orthopedics) (This shall be a recognized medical qualification when granted by Dr. Ram Manohar Lohia Hospital, New Delhi on or after 1986)
Diploma in Child Health	D.C.H. (This shall be a recognized medical qualification when granted by Dr. Ram Manohar Lohia Hospital, New Delhi on or after 1968)
Diploma in Ophthalmology	D.O. (This shall be a recognized medical qualification when granted by Dr. Ram Manohar Lohia Hospital, New Delhi on or after April, 2005)
Master of Surgery (General Surgery)	M.S. (General Surgery) (This shall be a recognized medical qualification when granted by Dr. Ram Manohar Lohia Hospital, New Delhi on or after 1969)
Doctor of Medicine (General Medicine)	M.D. (General Medicine) (This shall be a recognized medical qualification when granted by Dr. Ram Manohar Lohia Hospital, New Delhi on or after 1966)
Doctor of Medicine (Radio-Diagnosis)	M.D. (Radio-Diagnosis) (This shall be a recognized medical qualification when granted by Dr. Ram Manohar Lohia Hospital, New Delhi on or after 1971)
Diploma in Venereology and Dermatology	D.V.D. (This shall be a recognized medical qualification when granted by Dr. Ram Manohar Lohia Hospital, New Delhi on or after 1969)
Diploma in Dermatology, Venereology and Leprosy	D.D.V.L. (This shall be a recognized medical qualification when granted by Dr. Ram Manohar Lohia Hospital, New Delhi on or after 1969)
Doctor of Medicine (Anaesthesia)	M.D. (Anaesthesia) (This shall be a recognized medical qualification when granted by Dr. Ram Manohar Lohia Hospital, New Delhi on or after 1968)
Master of Surgery (General Surgery)	M.S. (General Surgery) (This shall be a recognized medical qualification when granted by Army Hospital, Delhi Cantt., Delhi on or after 1966)
Diploma in Laryngology and Otology	D.L.O. (This shall be a recognized medical qualification when granted by Army Hospital, Delhi Cantt., Delhi on or after 1983)
Master of Surgery (Orthopedics)	M.S. (Orthopedics) (This shall be a recognized medical qualification when granted by Lady Hardinge Medical College, New Delhi on or after 1977)
Doctor of Medicine (Anaesthesia)	M.D. (Anaesthesia) (This shall be a recognized medical qualification when granted by Safdarjung Hospital, New Delhi on or after 1961)
Diploma in Anaesthesia	D.A. This shall be a recognized medical qualification when granted by Safdarjung Hospital, New Delhi on or after 1961)
Diploma in Laryngology and Otology	D.L.O. (This shall be a recognized medical qualification when granted by Safdarjung Hospital, New Delhi on or after 1965)
Diploma in Child Health	D.C.H. (This shall be a recognized medical qualification when granted by Safdarjung Hospital, New Delhi on or after 1962)

2	3
Diploma in Venereology and Dermatology	D.V.D. (This shall be a recognized medical qualification when granted by Safdarjung Hospital, New Delhi on or after 1968)
Diploma in Dermatology, Venereology and Leprosy	D.D.V.L. (This shall be a recognized medical qualification when granted by Safdarjung Hospital, New Delhi on or after 1968)
Diploma in Anaesthesia	D.A. (This shall be a recognized medical qualification when granted by Hindu Rao Hospital, Delhi on or after 1968)
(d) against "Nagpur University", under the heading 'Recognized Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely :—	

2	3
Diploma in Obst. and Gynae	D.G.O. (This shall be a recognized medical qualification when granted by J.L.N. Medical College, Swangi, Wardha on or after April, 2005)
Doctor of Medicine (General Medicine)	M.D.(General Medicine) (This shall be a recognized medical qualification when granted by J.L.N. Medical College, Swangi, Wardha on or after November, 2003)
(e) against "Punjab University", under the heading 'Recognized Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely :—	

2	3
Master of Surgery (Ophthalmology)	M.S. (Ophthalmology) (This shall be a recognized medical qualification when granted by Christian Medical College, Ludhiana, on or after December, 1985 to December, 1999)
Doctor of Medicine (Physiology)	M.D. (Physiology) (This shall be a recognized medical qualification when granted by Christian Medical College, Ludhiana, on or after 1996)
Doctor of Medicine (Physiology)	M.D. (Physiology) (This shall be a recognized medical qualification when granted by Dayanand Medical College, Ludhiana, from on or after 1984 to 1999)
(f) against "Baba Farid University of Health Sciences, Faridkot", under the heading 'Recognized Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely :—	

2	3
Master of Surgery (Ophthalmology)	M.S. (Ophthalmology) (This shall be a recognized medical qualification when granted by Christian Medical College, Ludhiana, on or after January, 2000)
Doctor of Medicine (Physiology)	M.D. (Physiology) (This shall be a recognized medical qualification when granted by Dayanand Medical College, Ludhiana, on or after 2000)
(g) against "Guwahati University and Assam University", under the heading 'Recognized Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely :—	

2	3
Master of Surgery (Otorhinolaryngology)	M.S. (E.N.T.) (This shall be a recognized medical qualification when granted by Silchar Medical College, Silchar, on or after 1988)
Master of Surgery (General Surgery)	M.S. (General Surgery) (This shall be a recognized medical qualification when granted by Silchar Medical College, Silchar, on or after 1988)
Master of Surgery (Ophthalmology)	M.S. (Ophthalmology) (This shall be a recognized medical qualification when granted by Silchar Medical College, Silchar, on or after 1988)

2	3
Diploma in Ophthalmology	D.O. (This shall be a recognized medical qualification when granted by Silchar Medical College, Silchar, on or after 1988)
(h) against "Rajasthan University", under the heading 'Recognized Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely :—	
2	3
Doctor of Medicine (Physiology)	M.D. (Physiology) (This shall be a recognized medical qualification when granted by Dr. S. N. Medical College, Jodhpur, on or after 1977)
Diploma in Child Health	D.C.H. (This shall be a recognized medical qualification when granted by S.M.S. Medical College, Jaipur, on or after 1987)
Master of Surgery (Orthopedics)	M.s. (Orthopedics) (This shall be a recognized medical qualification when granted by J.L.N. Medical College, Ajmer, on or after April, 1983)
(i) against "Calcutta University", under the heading 'Recognized Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely :—	
2	3
Doctor of Medicine (Tuberculosis and Respiratory Diseases)	M.D. (TB and Respiratory Diseases) (This shall be a recognized medical qualification when granted by N.R.S. Medical College, Kolkata, on or after April, 1975)
(j) against "Saurashtra University", under the heading 'Recognized Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely :—	
2	3
Doctor of Medicine (General Medicine)	M.D. (General Medicine) (This shall be a recognized medical qualification when granted by Pt. Deen Dayal Upadhyay Medical College, Rajkot on or after December, 2004)
(k) against "Gujarat University", under the heading 'Recognized Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely :—	
2	3
Doctor of Medicine (Anaesthesia)	M.D. (Anaesthesia) (This shall be a recognized medical qualification when granted by Smt. N.H.L. Municipal Medical College, Ahmedabad on or after 1967)
Diploma in Anaesthesia	D.A. (This shall be a recognized medical qualification when granted by Smt. N.H.L. Municipal Medical College, Ahmedabad on or after 1966)
Doctor of Medicine (Physiology)	M.D. (Physiology) (This shall be a recognized medical qualification when granted by Smt. N.H.L. Municipal Medical College, Ahmedabad on or after 1973)
(l) against "Dr. Baba Saheb Ambedkar Marathwada University", under the heading 'Recognized Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely :—	
2	3
Doctor of Medicine (Obstetrics and Gynaecology)	M.D. (Obst. and Gynae) (This shall be a recognized medical qualification when granted by M.G.M. Medical College, Aurangabad on or after August, 2005)

[No. U-12012/6/2006-ME (P-II)]

S. K. MISHRA, Under Secy.

नई दिल्ली, 31 जुलाई, 2007

का.आ. 2291.—केन्द्रीय सरकार दन्त चिकित्सक अधिनियम, 1948 (1948 का 16) की धारा 10 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारतीय दन्त चिकित्सा परिषद् से परामर्श करके उक्त अधिनियम की अनुसूची के भाग-I में एतद्वारा निम्नलिखित संशोधन करती है; अर्थात् :

2. पटना विश्वविद्यालय, पटना से संबंधित दन्त चिकित्सक अधिनियम, 1948 (1948 का 16) की अनुसूची के भाग-I में, क्रम संख्या 16 के सामने के स्तंभ 2 और 3 की मौजूदा प्रविष्टियों में, निम्नलिखित दन्त चिकित्सा महाविद्यालय के बारे में निम्नलिखित प्रविष्टियां उसके नीचे रखी जाएंगी :

राजकीय दन्त चिकित्सा महाविद्यालय, पटना

“(iii) एमडीएस (मुख्य विकृति विज्ञान)

(यदि यह अर्हता केवल वर्ष 1995, 1996 और 2001 में प्रदान की गई हो)

एम.डी.एस. (मुख्य विकृति विज्ञान)

पटना विश्वविद्यालय, पटना”

[सं. वी-12018/6/2006-डीई]

राज सिंह, अवर सचिव

New Delhi, the 31st July, 2007

S.O. 2291.—In exercise of the powers conferred by sub-section (2) of Section 10 of the Dentists Act, 1948 (16 of 1948), the Central Government, after consultation with Dental Council of India, hereby makes the following amendments in Part-I of the Schedule to the said Act, namely :—

2. In the existing entries of column 2 & 3 against Serial No. 16, in Part-I of the Schedule to the Dentists Act, 1948 (16 of 1948), pertaining to, Patna University, Patna the following entries in respect of following dental college shall be inserted thereunder :—

Government Dental College, Patna

“(iii) MDS (Oral Pathology)

(if granted during the years 1995, 1996 and 2001 only)

MDS (Oral Pathology)

Patna University, Patna”

[No. V-12018/6/2006-DE]

RAJ SINGH, Under Secy.

नई दिल्ली, 31 जुलाई, 2007

का.आ. 2292.—केन्द्रीय सरकार दन्त चिकित्सक अधिनियम, 1948 (1948 का 16) की धारा 10 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारतीय दन्त चिकित्सा परिषद् से परामर्श करके उक्त अधिनियम की अनुसूची के भाग-I में एतद्वारा निम्नलिखित संशोधन करती है; अर्थात् :

2. राजीव गांधी यूनिवर्सिटी ऑफ हेल्थ साइंसेज (आरजीयूओएचएस), बंगलौर के संबंध में दन्त चिकित्सक अधिनियम, 1948 (1948 का 16) की अनुसूची के भाग-I में संख्या 49 के सामने स्तंभ 2 तथा 3 की मौजूदा प्रविष्टियों में, निम्नलिखित डेंटल कॉलेज के बारे में निम्नलिखित प्रविष्टियां रखी जाएंगी :

VII. एमआरए डेंटल कॉलेज एवं हास्पिटल, बंगलौर

“(ii) एमडीएस (कंजरवेटिव डेंटिस्ट्री)

(यदि 21-2-2002 को अथवा उसके बाद प्रदान की गई हो)

एमडीएस (कंजरवेटिव डेंटिस्ट्री)

(आरजीयूओएचएस), बंगलौर”

[सं. वी-12017/14/96-डीई (पार्ट)]

राज सिंह, अवर सचिव

New Delhi, the 31st July, 2007

S.O. 2292.—In exercise of the powers conferred by sub-section (2) of Section 10 of the Dentists Act, 1948 (16 of 1948), the Central Government, after consultation with Dental Council of India, hereby makes the following amendments in Part-I of the Schedule to the said Act, namely :—

2. In the existing entries of column 2 and 3 against Serial No. 49, in Part-I of the Schedule to the Dentists Act, 1948 (16 of 1948), pertaining to, Rajiv Gandhi University of Health Sciences (RGUHS), Bangalore, the following entries in respect of following dental college shall be inserted thereunder :—

VII. MRA Dental College and Hospital, Bangalore

“(ii) MDS (Conservative Dentistry)
(When granted on or after 21-2-2002)

MDS (Con. Dentistry)
RGUOHS, Bangalore”

[No. V-12017/14/96-DE (Pt.)]

RAJ SINGH, Under Secy.

नई दिल्ली, 17 जुलाई, 2007

का.आ. 2293.—केन्द्रीय सरकार दन्त चिकित्सक अधिनियम, 1948 (1948 का 16) की धारा 10 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारतीय दन्त चिकित्सा परिषद् से परामर्श करके उक्त अधिनियम की अनुसूची के भाग-I में एतद्वारा निम्नलिखित संशोधन करती है; अर्थात् :

2. महर्षि दयानन्द विश्वविद्यालय, हरियाणा के संबंध में दन्त चिकित्सक अधिनियम, 1948 (1948 का 16) की अनुसूची के भाग-I में क्रम संख्या 25 के सामने स्तंभ 2 तथा 3 की मौजूदा प्रविष्टियों में निम्नलिखित प्रविष्टियां रखी जाएंगी :

**II. श्री गोविन्द ट्रिसेंटेनरी डेंटल कालेज,
अस्पताल एवं अनुसंधान केन्द्र, बुढेरा, गुडगांव**

“बैचलर ऑफ डेंटल सर्जरी
(यदि 25-10-2006 को अथवा उसके बाद प्रदान की गई हो)

बीडीएस, महर्षि दयानन्द विश्वविद्यालय,
रोहतक, हरियाणा”

[सं. वी-12017/32/2001-डीई]

राज सिंह, अवर सचिव

New Delhi, the 17th July, 2007

S.O. 2293.—In exercise of the powers conferred by sub-section (2) of Section 10 of the Dentists Act, 1948 (16 of 1948), the Central Government, after consultation with Dental Council of India, hereby makes the following amendments in Part-I of the Schedule to the said Act, namely :—

2. In the existing entries of column 2 and 3 against Serial No. 25, in Part-I of the Schedule to the Dentists Act, 1948 (16 of 1948), pertaining to, Maharshi Dayanand University, Haryana, the following entries shall be inserted thereunder :—

**II. Shri Govind Tricentenary Dental College,
Hospital and Research Institute, Budhera, Gurgaon**

“Bachelor of Dental Surgery
(When granted on or after 25-10-2006)

BDS, Maharshi Dayanand University,
Rohtak, Haryana”

[No. V-12017/32/2001-DE]

RAJ SINGH, Under Secy.

नई दिल्ली, 31 जुलाई, 2007

का.आ. 2294.—केन्द्रीय सरकार दन्त चिकित्सक अधिनियम, 1948 (1948 का 16) की धारा 10 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारतीय दन्त चिकित्सा परिषद् से परामर्श करके उक्त अधिनियम की अनुसूची के भाग-I में एतद्वारा निम्नलिखित संशोधन करती है; अर्थात् :

2. इस अनुसूची के भाग-I में, क्रम संख्या 68 और उससे संबंधित प्रविष्टियों के बाद निम्नलिखित क्रम संख्या तथा प्रविष्टियां रखी जाएंगी; अर्थात् :

“69. बरकतुल्ला विश्वविद्यालय, भोपाल

I. पीपल्स कालेज आफ डेंटल
साइंसेज एंड रिसर्च सेंटर भोपाल

(i) बैचलर आफ डेंटल सर्जरी बी. डी. एस. बरकतुल्ला
(यदि यह अर्हता 6-2-2007 को या विश्वविद्यालय, भोपाल
इसके बाद प्रदान की गई हो)

[सं. वी-12017/30/2002-पीएमएस/डीई]

राज सिंह, अवर सचिव

New Delhi, the 31st July, 2007

S.O. 2294.—In exercise of the powers conferred by sub-section (2) of Section 10 of the Dentists Act, 1948 (16 of 1948), the Central Government, after consultation with Dental Council of India, hereby makes the following amendments in Part-I of the Schedule to the said Act, namely :—

2. In part-I of the schedule, after serial No. 68, and the entries relating thereto, the following serial number and entries shall be inserted, namely :—

"69. Barkatullah University,
Bhopal

1. People's College of Dental Sciences &
Research Centre, Bhopal

(i) Bachelor of Dental Surgery
(When granted on or after 6-2-2007)

BDS, Barkatullah
University, Bhopal"

[F.No. V-12017/30/2002-PMS/DE]

RAJ SINGH, Under Secy.

नई दिल्ली, 31 जुलाई, 2007

का.आ. 2295.—केन्द्रीय सरकार दन्त चिकित्सक अधिनियम, 1948 (1948 का 16) की धारा 10 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारतीय दन्त चिकित्सा परिषद् से परामर्श करके उक्त अधिनियम की अनुसूची के भाग-I में एतद्वारा निम्नलिखित संशोधन करती है; अर्थात् :

2. महाराष्ट्र यूनिवर्सिटी आफ हेल्थ साइंसेज, नासिक के संबंध में दन्त चिकित्सक अधिनियम, 1948 (1948 का 16) की अनुसूची के भाग-I में क्रम सं. 60 के सामने स्तंभ 2 तथा 3 की मौजूदा प्रविष्टियों में निम्नलिखित प्रविष्टियां रखी जाएंगी :—

"XX. अन्ना साहेब चूडामन पाटिल मेमोरियल डेंटल

कालेज, धुले, महाराष्ट्र

(i) बैचलर आफ डेंटल सर्जरी

(यदि यह अर्हता 27-12-2006 को या इसके बाद प्रदान की गई हो)

बीडीएस, महाराष्ट्र यूनिवर्सिटी

आफ हेल्थ साइंसेज, नासिक"

[सं. वी-12017/15/2001-पीएमएस/डी ई]

राज सिंह, अव्वर सचिव

New Delhi, the 31st July, 2007

S.O. 2295.—In exercise of the powers conferred by sub-section (2) of Section 10 of the Dentists Act, 1948 (16 of 1948), the Central Government, after consultation with Dental Council of India, hereby, makes the following amendments in Part-I of the Schedule to the said Act, namely :—

2. In the existing entries of column 2 & 3 against Serial No. 60, in part-I of the Schedule to the Dentists Act, 1948 (16 of 1948) pertaining to Maharashtra University of Health Sciences, Nashik, the following entries shall be inserted thereunder :—

"XX. Annasaheb Chudaman Patil Memorial
Dental College, Dhule, Maharashtra

(i) Bachelor of Dental Surgery
(When granted on or after 27-12-2006)

BDS, Maharashtra University of Health Sciences, Nashik."

[No. V-12017/15/2001-PMS/DE]

RAJ SINGH, Under Secy.

नई दिल्ली, 20 जुलाई, 2007

का.आ. 2296.—केन्द्रीय सरकार दन्त चिकित्सक अधिनियम, 1948 (1948 का 16) की धारा 10 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारतीय दन्त चिकित्सा परिषद् से परामर्श करके उक्त अधिनियम की अनुसूची के भाग-I में एतद्वारा निम्नलिखित संशोधन करती है; अर्थात् :

2. इस अनुसूची के भाग-I में क्रम सं. 67 और उससे संबंधित प्रविष्टियों के बाद निम्नलिखित क्रम संख्या तथा प्रविष्टियां रखी जाएंगी अर्थात् :—

“68 महात्मा गांधी विश्वविद्यालय, कोट्टायम

I. राजकीय दन्त

चिकित्सा महाविद्यालय कोट्टायम

(i) बैचलर आफ डेंटल सर्जरी
(यदि यह अर्हता 15-5-2007 को या
इसके बाद प्रदान की गई हो)

बी.डी.एस. महात्मा गांधी
विश्वविद्यालय, कोट्टायम

II. मार बेसलियो दन्त

चिकित्सा महाविद्यालय कोतमंगलम

(i) बैचलर आफ डेंटल सर्जरी
(यदि यह अर्हता 17-5-2007 को या
इसके बाद प्रदान की गई हो)

बी.डी.एस. महात्मा गांधी
विश्वविद्यालय, कोट्टायम

[सं. वी-12017/2/2001-पीएमएस/डीई]

राज सिंह, अवर सचिव

New Delhi, the 20th July, 2007

S.O. 2296.—In exercise of the powers conferred by sub-section (2) of Section 10 of the Dentists Act, 1948 (16 of 1948), the Central Government, after consultation with Dental Council of India, hereby, makes the following amendments in Part-I of the Schedule to the said Act, namely :—

2. In Part-I of the Schedule, after serial No. 67, and the entries relating thereto, the following serial number and entries shall be inserted, namely :—

“68 Mahatma Gandhi University,
Kottayam

I. Government Dental College,
Kottayam

(i) Bachelor of Dental Surgery
(When granted on or after 15-5-2007)

BDS, Mahatma Gandhi University,
Kottayam

II. Mar Baselios Dental College,
Kothamangalam

(i) Bachelor of Dental Surgery
(When granted on or after 17-5-2007)

BDS, Mahatma Gandhi University,
Kottayam

[No. V-12017/2/2001-PMS/DE]

RAJ SINGH, Under Secy.

नई दिल्ली, 2 अगस्त, 2007

का.आ. 2297.—केन्द्रीय सरकार राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उपनियम (4) के अनुसरण में स्वास्थ्य और परिवार कल्याण मंत्रालय के अन्तर्गत आने वाले निम्नलिखित कार्यालयों को जिसके 80 प्रतिशत से अधिक कर्मचारीवृन्द ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है :—

1. राष्ट्रीय पोषण संस्थान,
जामिया उसमानिया,
हैदराबाद-500007

[सं. ई. 11012/1/94-रा.भा.का. (हिन्दी-1)]

दीना नाथ पाठक, मुख्य लेखा नियंत्रक

New Delhi, the 2nd August, 2007

S.O. 2297.—In pursuance of sub rule (4) of Rule 10 of the Official Language (Use of official purposes of Union) Rules, 1976, the Central Government hereby notifies the following offices under the Ministry of Health and Family Welfare, whereof 80 per cent staff have acquired working knowledge of Hindi :

1. National Institute of Nutrition,
Jamai Osmania,
Hyderabad-500007.

[No. E. 11012/1/94-O.L.I. (Hindi-I)]

D. N. PATHAK, Chief Controller of Accounts

विदेश मंत्रालय

(सी.पी.वी. डिवीजन)

नई दिल्ली, 12 जुलाई, 2007

का.आ. 2298.—राजनयिक कौंसली अधिकारी (शपथ एवं शुल्क) अधिनियम, 1948 (1948 का 41वां) की धारा 2 के अंक (क) के अनुसरण में केन्द्रीय सरकार एतद्वारा भारत का राजदूतावास, टोरन्टो में श्रीमती परमजीत कौर आनन्द, सहायक को 12-7-2007 से सहायक कौंसली अधिकारी का कार्य करने हेतु प्राधिकृत करती है।

[सं. टी-4330/01/2006]

प्रीतम लाल, अवर सचिव (कौंसुलर)

MINISTRY OF EXTERNAL AFFAIRS

(C.P.V. Division)

New Delhi, the 12th July, 2007

S.O. 2298.—In pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby authorise Mrs. Paramjeet Kaur Anand, Assistant in the Consulate General of India, Toronto to perform the duties of Assistant Consular Officer with effect from 12-7-2007.

[No. T-4330/01/2006]

PRITAM LAL, Under Secy. (Consular)

नई दिल्ली, 31 जुलाई, 2007

का.आ. 2299.—राजनयिक कौंसली अधिकारी (शपथ एवं शुल्क) अधिनियम, 1948 (1948 का 41वां) की धारा 2 के अंक (क) के अनुसरण में केन्द्रीय सरकार एतद्वारा भारत का राजदूतावास, बर्मिंघम में श्री मनोज दत्त पुरकेस्था, सहायक को 25-7-2007 से सहायक कौंसली अधिकारी का कार्य करने हेतु प्राधिकृत करती है।

[सं. टी-4330/01/2006]

प्रीतम लाल, अवर सचिव (कौंसुलर)

New Delhi, the 31st July, 2007

S.O. 2299.—In pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby authorise Shri Manoj Dutt Purkayastha, Assistant in the Consulate General of India, Birmingham to perform the duties of Assistant Consular Officer with effect from 25th July, 2007.

[No. T-4330/01/2006]

PRITAM LAL, Under Secy. (Consular)

नई दिल्ली, 31 जुलाई, 2007

का.आ. 2300.—राजनयिक कौंसली अधिकारी (शपथ एवं शुल्क) अधिनियम, 1948 (1948 का 41वां) की धारा 2 के अंक (क) के अनुसरण में केन्द्रीय सरकार एतद्वारा भारत का राजदूतावास, वियतनाम में श्री जोए रापहेल एम, सहायक को 25-7-2007 से सहायक कौंसली अधिकारी का कार्य करने हेतु प्राधिकृत करती है।

[सं. टी-4330/01/2006]

प्रीतम लाल, अवर सचिव (कौंसुलर)

New Delhi, the 31st July, 2007

S.O. 2300.—In pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby authorise Shri Joy Rapheal M, Assistant in the Embassy of India, Vietnam to perform the duties of Assistant Consular Officer with effect from 25th July, 2007.

[No. T-4330/01/2006]

PRITAM LAL, Under Secy. (Consular)

नई दिल्ली, 10 अगस्त, 2007

का.आ. 2301.—राजनयिक कौंसली अधिकारी (शपथ एवं शुल्क) अधिनियम, 1948 (1948 का 41वां) की धारा 2 के अंक (क) के अनुसरण में केन्द्रीय सरकार एतद्वारा भारत का राजदूतावास, कुवैत में श्री वी. वी. एस. के सेटी, सहायक को 10-8-2007 से सहायक कौंसली अधिकारी का कार्य करने हेतु प्राधिकृत करती है।

[सं. टी-4330/01/2006]

प्रीतम लाल, अवर सचिव (कौंसुलर)

New Delhi, the 10th August, 2007

S.O. 2301.—In pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby authorise Shri V. V. S. K. Setty, Assistant in Embassy of India, Kuwait to perform the duties of Assistant Consular Officer with effect from 10-8-2007.

[No. T-4330/01/2006]

PRITAM LAL, Under Secy. (Consular)

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

भारतीय मानक ब्यूरो

नई दिल्ली, 6 अगस्त, 2007

का.आ. 2302.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के नियम 4 के उपनियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं :-

अनुसूची

जून 2007 में स्वीकृत किये गये अनुज्ञप्ति

क्रम संख्या	लाइसेंस संख्या	लाइसेंस का नाम तथा पता	उत्पाद का नाम तथा आई एस	अनुज्ञप्ति स्वीकृत करने की तिथि.
(1)	(2)	(3)	(4)	(5)
1.	7743489	मैसर्स दागिना ज्वैलर्स (आई) प्रा. लि., शॉप नंबर 22 से 31, अपर ग्राउंड, अभिनंदन ए सी मार्केट, गौड डोड रोड, सूरत 395 007	स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/ शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417 : 1999	29-5-2007
2.	7743590	जिंदुवाडिया ज्वैलर्स, 109, अभिशोक काम्प्लैक्स, कामेश्वर महादेव, अंकुर रोड, नारायणपुरा, अहमदाबाद	स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/ शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417 : 1999	28-5-2007
3.	7745792	मैसर्स आशापुरी ज्वैलर्स, 2, मानसी प्वाइंट, सुभाष चौक, सोमल चार रास्ता, मेमनगर, अहमदाबाद-380 052	स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/ शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417 : 1999	29-5-2007
4.	7747897	राधिका ज्वैलर्स, जी 84, गैलेक्सी अपार्टमेंट, ग्रैंड भगवती के पास, एस जी हाइवे रोड, बोडकदेव, अहमदाबाद 380 054	स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/ शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417 : 1999	5-6-2007
5.	7748091	बहम पुरी ज्वैलर्स, आशादीप चैम्बर्स, डॉ. गिरधर पटेल मार्ग, पालनपुर, बनसकांटा	स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/ शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417 : 1999	5-6-2007

(1)	(2)	(3)	(4)	(5)
6.	7748192	कांतिलाल मगनलाल ज्वैलर्स, 1/975 बी, ग्राउंड फ्लोर, लाइब्रेरी के पास, नानकपुरा मेन रोड, सूरत 395 001	स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/ शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417 : 1999	5-6-2007
7.	7750785	ज्यंतीलाल तथा ब्रदर्स, 10/2591, भगतलाव मेन रोड, सूरत	स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/ शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417 : 1999	13-13-2006
8.	7750583	कलपतरू ज्वैलर्स, 341-342, प्राईम आरकडे, आनंद महल रोड, अडाजन, सूरत	स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/ शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417 : 1999	12-06-2007
9.	7751282	श्री सहजानंद वुलियन, 1/4, पुनित शॉपिंग सेंटर, बालाजी गर्ल्स स्कूल के सामने, बालाजी रोड, सूरत	स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/ शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417 : 1999	13-06-2007
10.	7751383	मैसर्स दौलतराम मगनदास ज्वैलर्स, शॉप नंबर 2, ब्लॉक नंबर 252, मेन रोड, सरदार नगर, अहमदाबाद 382 475	स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/ शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417 : 1999	13-06-2007
11.	7752284	के. के. ज्वैलर्स, 7 तथा 8, नेशनल प्लाजा, लाल बंगला के सामने, सी जी रोड, अहमदाबाद 380 009	स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/ शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417 : 1999	15-06-2007
12.	7752385	कोठारी ज्वैलर्स, राजा रोड, मारोली बाजार, मारोली नवसारी 396 436	स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/ शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417 : 1999	15-06-2007
13.	7752587	दीपाली ज्वैलर्स, 1712, भावसरवाड, नटपुर बैंक के पास, नडियाड, खेड़ा 387 001	स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/ शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417 : 1999	15-06-2007
14.	7754086	एस पी आई कंटेनर्स प्रा लि, सर्वे नंबर 439/1+2, चाचरवाडी बस स्टाप के सामने, सरखेज बावला हाईवे, गाँव मातोडा चंगोदर, अहमदाबाद 382 213	बंद सिरे वाले ड्रम बड़े आई एस 1783 (भाग 2) : 1988	25-06-2007
15.	7753690	डिसेंट लैमिनेटस प्रा लि, सर्वे नंबर 296/1, कलोल मेहसाना हाइवे गाँव नंदासन, तालुक कडी, मेहसाना, कलोल	डैकोरेटिव थर्मोसेटिंग सिनथैटिक रेसिन बांडिड लैमिनेटिड शीट आई एस 2046 : 1995	20-06-2007
16.	7745691	जिंदुवाडिया ज्वैलर्स, 109, अभिशोक काम्पलैक्स, कामेश्वर महादेव, अंकुर रोड, नारायणपुरा, अहमदाबाद 380 013	चांदी एवं चांदी मिश्र धातुओं के आभूषणों/ शिल्पकारी शुद्धता एवं मुहरांकन आई एस 2112 : 2003	29-05-2007

(1)	(2)	(3)	(4)	(5)
17.	7750684	कलपतरू ज्वैलर्स, 341-342, प्राईम आरकडे, आनंद महल रोड, अडाजन, सूरत	चांदी एवं चांदी मिश्र धातुओं के आभूषणों/ शिल्पकारी शुद्धता एवं मुहरांकन आई एस 2112 : 2003	13-06-2007
18.	7750886	जयंतीलाल तथा ब्रदर्स, 10/2591, भगतलाव मेन रोड, सूरत	चांदी एवं चांदी मिश्र धातुओं के आभूषणों/ शिल्पकारी शुद्धता एवं मुहरांकन आई एस 2112 : 2003	13-06-2007
19.	7752486	दीपली ज्वैलर्स, 1712, भावसरवाड, नटपुर बैंक के पास, नडियाड, खेडा 387 001	चांदी एवं चांदी मिश्र धातुओं के आभूषणों/ शिल्पकारी शुद्धता एवं मुहरांकन आई एस 2112 : 2003	15-06-2007
20.	7747392	डिलाइट केबल्स प्रा. लि., पार्थ 2, कस्तूरबा नगर, नूतन स्कूल के पास, सामा, वडोदरा	क्रासलिकंड पोलिथलिन इन्सूलेटिड पी वी सी शिथड केबल आई एस 7098 पार्ट 1 : 1998	4-6-2007
21.	7749905	मैकेब केबल्स प्रा. लि., 635/ए, फेस 4, जी आई डी सी, वाटवा, अहमदाबाद	क्रासलिकंड पोलिथलिन इन्सूलेटिड पी वी सी शिथड केबल आई एस 7098 पार्ट 1 : 1988	11-6-2007
22.	7746895	परेश इंडस्ट्रीज, प्लॉट नंबर 7 और 8, प्रकाश इंडस्ट्रियल एस्टेट वस्त्राल रोड, अमराईवाडी, अहमदाबाद	ओपनवैल सबमर्सिबल पम्पसेट आई एस 14220 : 1994	1-6-2007
23.	7747291	डिलाइट केबल्स प्रा. लि., पार्थ 2, कस्तूरबा नगर, नूतन स्कूल के पास, सामा, वडोदरा	एरिया बंचड केबल फार वर्किंग बोलटेज आई 14255 : 1995	28-5-2007
24.	7754389	संगीर प्लास्टिक प्रा लि, ए 1/2212 तथा 2213, तीसरा फेस, वापी	हाई डेंसिटी पालिथलिन पाइप फार सिवरेज आई एस 14333 : 1996	25-6-2007
25.	7755492	हीर ज्वैलर्स, 8, सूर्या शापिंग सेंटर, सेवाश्रम रोड, भारूच-392 001	स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/ शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417 : 1999	28-6-2007
26.	7755391	चोकसी सतीश चंद्र जगमोहनदास, गांधी चौक, पादरा, वडोदरा-391 440	स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/ शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417 : 1999	28-6-2007
27.	7755290	जय अंबे ज्वैलर्स, 471, प्रभात नगर सोसाइटी, सूर्य नगर के पास, खोखरा, अहमदाबाद-380 008	स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/ शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417 : 1999	28-6-2007
28.	7754995	आभूषण ज्वैलर्स, 482, शाक मार्केट, नवा वाडेज, अहमदाबाद 380 013	स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/ शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417 : 1999	28-6-2007

(1)	(2)	(3)	(4)	(5)
29.	7755896	सोनी धनश्याम लाल जयंती लाल तथा कम्पनी, 118, इस्कोन आरकडे, टाइम स्क्वेयर के सामने, सी जी रोड, नवरंगपुरा, अहमदाबाद-380 006	स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/ शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417 : 1999	28-6-2007
30.	7755795	एन एस ज्वैलर्स, 8, कमल काम्पलैक्स, सरदार स्टेडियम सर्कल के पास, सी जी रोड, नवरंगपुरा, अहमदाबाद	स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/ शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417 : 1999	28-6-2007
31.	7755593	बी एन गोल्ड पैलेस, 2538, तिलक मैदान, मानेक चौक, चोकसी बाजार, अहमदाबाद	स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/ शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417 : 1999	28-6-2007
32.	7755694	सोनी नवीनचंद्र शांतिलाल ज्वैलर्स, 10, कमल काम्पलैक्स, स्वास्तिक चार रस्ता के पास, नवरंगपुरा, अहमदाबाद 380 009	स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/ शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417 : 1999	28-06-2007
33.	7755088	जगदम्बा ज्वैलर्स, 1, गोल्डन शापिंग सेंटर, कृष्णा एस्टेट के सामने, कृष्णा नगर रोड, सैजपुर, अहमदाबाद-382 345	स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/ शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417 : 1999	28-6-2007
34.	7755189	ज्वैलरी हाऊस, जी/9, चिनमय टावर, सुभाष चौक, गुरुकुल रोड, मेमनगर, अहमदाबाद	स्वर्ण एवं स्वर्ण मिश्र धातुओं के आभूषणों/ शिल्पकारी शुद्धता एवं मुहरांकन आई एस 1417 : 1999	28-06-2007

[सं. सी एम डी/ 13 : 11]

ए.के. तलवार, उप महानिदेशक (मुहर)

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

BUREAU OF INDIAN STANDARDS

New Delhi, the 6th August, 2007

S.O. 2302.—In Pursuance of sub-regulation (5) of regulation 4 of the Bureau of Indian Standards (Certification) Regulation 1988, of the Bureau of Indian Standards, hereby notifies the grant of licence particular of which are given in the following schedule :

SCHEDULE

Sl. No.	Licence No.	Name and address of the licences	Article/process with relevant Indian Standard covered by the licensee	Date of Grant of licence
(1)	(2)	(3)	(4)	(5)
1.	7745489	Dagina Jewellers (I) Pvt. Ltd. Shop No. 22 to 31, Upper Ground, Abhinanadan AC Market, God Dod Road. Surat-395007	Gold and Gold Alloys, Jewellery/ Artefacts-Finences and Marking- Specification IS 1417:1999	29-5-2007
2.	7745590	Zinzuwadia Jewellers 109, Abhishek Complex. Near Kameshwar Mahadev, Ankur Road Naranpura, Ahmedabad	Gold and Gold Alloys, Jewellery/ Artefacts-Finences and Marking- Specification IS 1417:1999	28-5-2007

(1)	(2)	(3)	(4)	(5)
3.	7745792	Ashapuri Jewellers 2, Mansi Point, Subhash Chowk, Sonal Char Rasta, Memnagar, Ahmedabad-380052	Gold and Gold Alloys, Jewellery/ Artefacts-Finences and Marking- Specification IS 1417:1999	29-5-2007
4.	7747897	Radhika Jewellers G-84, Galaxy Apartments, Near the Grand Bhagwati, Off. S. G. Highway, Bodakdev, Ahmedabad 380054	Gold and Gold Alloys, Jewellery/ Artefacts-Finences and Marking- Specification IS 1417:1999	05-6-2007
5.	7748091	Brahmpuri Jewellers Ashadip Chambers, Dr. Girdhar Patel Marg, Palanpur, Banaskantha	Gold and Gold Alloys, Jewellery/ Artefacts-Finences and Marking- Specification IS 1417:1999	5-6-2007
6.	7748192	Kantilal Maganlal Jewellers 1/975-B, Ground Floor Near Library, Nanpura Main Road, Surat 395001	Gold and Gold Alloys, Jewellery/ Artefacts-Finences and Marking- Specification IS 1417:1999	5-6-2007
7.	7750785	Jayantilal & Brothers 10/2591, Bhagatalav Main Road Surat.	Gold and Gold Alloys, Jewellery/ Artefacts-Finences and Marking- Specification IS 1417:1999	13-6-2007
8.	7750583	Kalpataru Jewellers 341-342, Prime Arcade, Anand Mahal Road, Adajan, Surat	Gold and Gold Alloys, Jewellery/ Artefacts-Finences and Marking- Specification IS 1417:1999	12-6-2007
9.	7751282	Shree Sahajanand Bullion 1/4, Punit Shopping Centre, Opp. Balaji Girls School, Balaji Road, Surat	Gold and Gold Alloys, Jewellery/ Artefacts-Finences and Marking- Specification IS 1417:1999	13-6-2007
10.	7751383	Doulattram Manghandas Jewellers Shop No. 2, Block No. 252, Main Road Sardarnagar Ahmedabad 382475	Gold and Gold Alloys, Jewellery/ Artefacts-Finences and Marking- Specification IS 1417:1999	13-6-2007
11.	7752284	K K Jewels 7 & 8, National Plaza, Opp. Lal Bunglow, C. G. Road, Ahmedabad 380009	Gold and Gold Alloys, Jewellery/ Artefacts-Finences and Marking- Specification IS 1417:1999	15-6-2007
12.	7752385	Kothari Jewellers Raja Road, Maroli Bazar, Maroli, Navsari 396436	Gold and Gold Alloys, Jewellery/ Artefacts-Finences and Marking- Specification IS 1417:1999	15-6-2007
13.	7752587	Dipali Jewellers 1712, Bhavsarwad, Near Natpur Bank, Nadiad, Kheda 387001	Gold and Gold Alloys, Jewellery/ Artefacts-Finences and Marking- Specification IS 1417:1999	15-6-2007
14.	7754086	SPI Containers Pvt. Ltd. Survey No. 439/1+2, Opp. Chacharwadi Bus-Stop, Sarkhej-Bavla High-way, Village-Matoda, Changodar Ahmedabad 382213	Drums Large fixed ends IS 1783:PART 2:1998	25-6-2007

(1)	(2)	(3)	(4)	(5)
15.	7753690	Decent Laminates Pvt. Ltd Survey No. 296/1, Kalol Mehasana Highway Village Nandasan Taluka Kadi, Mehsana Kalol	Decorative Thermosetting Synthetic Resin Bonded Laminated Sheets IS 2046:1995	20-6-2007
16.	7745691	Zinzuwadi Jewellers 109, Abhishek Complex, Near Kameshwar Mahadev, Ankur Road, Naranpura, Ahmedabad-380013	Silver and Siler Alloys, Jewellery/Artefacts- Fineness and Marking- Specification IS 2112:2003	29-5-2007
17.	7750684	Kalpataru Jewellers 341-342, Prime Arcade, Anand Mahal Road, Adajan, Surat	Silver and Silver Alloys, Jewellery/Artefacts- Fineness and Marking-Specification IS 2112:2003	13-6-2007
18.	7750886	Jayantilal & Brothers 10/2591, Bhagatalav Main Road Surat	Silver and Silver Alloys, Jewellery/Artefacts- Fineness and Marking IS 2112:2003	13-6-2007
19.	7752486	Dipali Jewellers 1712, Bhavsarwad, Near Natpur Bank, Nadiad, Kheda-387001	Silver and Silver Alloys, Jewellery/Artefacts- Fineness and Marking-Specification IS 2112:2003	15-6-2007
20.	7747392	Delite Cables Pvt. Ltd "Parth" 2, Kasturbanagar, Near Nutan School, Sama, Vadodara	Crosslinked Polyethylene Insulated PVC Sheathed Cables 7098:Part 1:1988	04-6-2007
21.	77499905	Mecab Cables Pvt. Ltd 635/A; Phase IV, GIDC, Vatwa, Ahmedabad	Crosslinked Polyethylene Insulated PVC Sheathed Cables 7098:Part 1:1988	11-6-2007
22.	7746895	Paresh Industries Plot No. 7 & 8, Prakash Industrial Estate, Vastral Road, Amraiwadi Ahmedabad	Openwell Submersible Pumpsets IS 14220:1994	01-6-2007
23.	7747291	Delite Cables Pvt. Ltd. "Parth" 2, Kasturbanager, Near Nutan School, Sama, Vadodara	Aerial Bunched Cables for Working Voltages IS 14255: 1995	28-5-2007
24.	7754389	Sangir Plastic Pvt. Ltd. A-1/2212 & 2213, 3RD Phase Vapi	High Density Polyethylene Pipes for sewerages IS 14333:1996	25-6-2007
25.	7755492	Heer Jewellers 8, Surya Shopping Centre, Sevashram Road, Bharuch-292001	Gold and Gold Alloys, Jewellery/ Artefacts-Fineness and Marking- Specification IS 1417:1999	28-6-2007
26.	7755391	Choksi Satishchandra Jagmohandas Gandhi Chowk, Padra Vadodara-391440	Gold and Gold Alloys, Jewellery/ Artefacts-Finences and Marking- Specification IS 1417:1999	28-6-2007
27.	7755290	Jay Ambe Jewellers 471, Prabbhat Nagar Society, NR. Surya Nagar, Khokhra, Ahmedabad-380008	Gold and Gold Alioys, Jewellery/ Artefacts-Fineness and Marking- Specification IS 1417:1999	28-6-2007

(1)	(2)	(3)	(4)	(5)
28.	7754995	Aabhushan Jewellers 482, Shak Market, Nava Vadaj, Ahmedabad 380013	Gold and Gold Alloys, Jewellery/ Artefacts-Fineness and Marking- Specification IS 1417:1999	28-6-2007
29.	7755896	Soni Ghanshyamlal Jayantilal & Co. 118, Iscone Arcade, Opp. Time Square, C. G. Road Navrangpura, Ahmedabad 380006	Gold and Gold Alloys, Jewellery/ Artefacts-Fineness and Marking- Specification IS 1417:1999	28-6-2007
30.	7755795	N. S. Jewels 8, Kamal Complex Near Sardar Stadium Circle, C.G. Road, Navrangpura Ahmedabad	Gold and Gold Alloys, Jewellery/ Artefacts-Fineness and Marking- Specification IS 1417:1999	28-6-2007
31.	7755593	V. N. Gold Palace 2538, Tilak Medan, Manek Chowk, Choksi Bazar, Ahmedabad	Gold and Gold Alloys, Jewellery/ Artefacts-Fineness and Marking- Specification IS 1417:1999	28-6-2007
32.	7755694	Soni Navinchandra Shantilal Jewellers, 10, Kamal Complex, Near Swastic Char Rasta, Navrangpura, Ahmedabad-380009	Gold and Gold Alloys, Jewellery/ Artefacts-Fineness and Marking- Specification IS 1417:1999	28-6-2007
33.	7755088	Jagdamba Jewellers 1, Golden Shopping Centre, Opp. Krushana Estate, Krushna Nagar Road, Saijpur Ahmedabad-382345	Gold and Gold Alloys, Jewellery/ Artefacts-Fineness and Marking- Specification IS 1417:1999	28-6-2007
34.	7755189	Jewellery House G/9, Chinmay Tower, Subhash Chowk, Gurukul Road, Memnagar, Ahmedabad	Gold and Gold Alloys, Jewellery/ Artefacts-Fineness and Marking- Specification IS 1417:1999	28-6-2007

[No. CMD/13:11]

A. K. TALWAR, Dy. Director General (Marks)

नई दिल्ली, 7 अगस्त, 2007

का.आ. 2303.—भारतीय मानक ब्यूरो, 1988 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि नीचे अनुसूची में दिए गए हैं मानक (कों) में संशोधन किया गया/किये गए हैं :-

अनुसूची

क्रम संख्या	संशोधित भारतीय मानक की संख्या और वर्ष	संशोधन की संख्या और तिथि	संशोधन लागू होने की तिथि
(1)	(2)	(3)	(4)
1.	आई एस 2379:1990 पाइप लाइनों की पहचान के लिए रंग-संकेत (पहला पुनरीक्षण)	संशोधन नं. 1, मई 2007	01 जून 2007
2.	आई एस 14899:2000 स्वचल उपयोग के लिए द्रवित पेट्रोलियम गैस (एल पी जी) के धारक-विशिष्ट	संशोधन नं. 4, मई 2007	19 जून 2007
3.	आई एस 15490:2004 वाहनों के लिए ईंधन के रूप में संपीड़ित प्राकृतिक गैस के ऑन-बोर्ड भंडारण के लिए सिलेंडर-विशिष्ट	संशोधन नं. 1, मई 2007	09 जुलाई 2007

(1)	(2)	(3)	(4)
4.	आई एस 15560:2005 160 टन तक के शैकयुक्त प्वाइंट हुक-विशिष्ट	संशोधन नं. 1, दिसम्बर 2006	31 दिसम्बर 2006

इस संशोधन की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चैन्नई, मुम्बई, तथा शाखा कार्यालयों: अहमदाबाद, बैंगलोर, भोपाल, भुवनेश्वर, कोयम्बटूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ: एम.ई.डी./जी-2:1]

सी. के. वेदा, वैज्ञा. एफ एवं प्रमुख (यांत्रिक इंजिनियरिंग)

New Delhi, the 7th August, 2007

S.O. 2303.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards, hereby notifies that amendments to the Indian Standards, particulars of which are given in the Schedule hereto annexed have been issued :

SCHEDULE

Sl. No.	Name and year of the Indian Standards	No. and year of the amendment	Date from which the amendment shall have effect
(1)	(2)	(3)	(4)
1.	IS 2379:1990 Pipelines-Identification-Colour Code (First Revision)	Amendment No. 1, May 2007	01 June 2007
2.	IS 14899:2000 Liquefied petroleum gas (LPG) containers for automotive use-Specification	Amendment No. 4, May 2007	19 June 2007
3.	IS 15490:2004 Cylinders for on-board storage of compressed natural gas as a fuel for automotive vehicles-Specification	Amendment No. 1, May 2007	09 July 2007
4.	IS 15560:2005 Point hooks with shank upto 160 tonne-Specification	Amendment No. 1, December 2006	31 December 2006

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bhadur Shah Zafar Marg, New Delhi-110002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Puna, Thiruvananthapuram.

[Ref: MED/G-2:1]

C. K. VEDA, Sc. F. & Head (Mechanical Engineering)

नई दिल्ली, 7 अगस्त, 2007

का.आ. 2304.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसार में एतद्वारा अधिसूचित किया जाता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं, वे रद्द कर दिए गए हैं और वापस ले लिये गये हैं :-

अनुसूची

क्रम संख्या	रद्द किये गये मानक की संख्या और वर्ष	भारत के राजपत्र भाग 2, खंड 3, उपखंड (ii) में का.आ. संख्या और तिथि प्रकाशित	टिप्पणी
(1)	(2)	(3)	(4)
1	आई एस 489 (भाग 1)-1973 काँच के एमप्यूलस भाग 1 : तरल के लिये एमप्यूलस (दूसरा पुनरीक्षण)		

(1)	(2)	(3)	(4)
2	आई एम 489 (भाग 2)-1973 काँच के एम्प्यूलस भाग 2 : तरल लिम्फो साइज्ड के लिये एम्प्यूलस (दूसरा पुनीरीक्षण)		

[सं. एम एच डी/जी-3.5]

राकेश चन्द्र वैज्ञा. एफ. एवं प्रमुख (एमएचडी)

New Delhi, the 7th August, 2007

S.O. 2304.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, it is hereby notified that the Indian Standards, particulars of which are mentioned in the Schedule given hereafter, have been cancelled and stand withdrawn.

SCHEDULE

Sl. No.	No. and year of the Indian Standards	S.O. & Date published in the Gazette of India, Part-II, Section 3. Sub-section (ii)	Remarks
(1)	(2)	(3)	(4)
1.	IS 489 (Pt. 1)-1973, Specification for Glass ampoules-Part 1 : Ampoules for liquid injectables (Second Revision)		
2.	IS 489 (Pt. 2)-1973, Specification for Glass ampoules-Part 2 : Ampoules for liquid lyophilized injectable (Second Revision)		

[No. MHD/G-3.5]

RAKESH CHANDER,, Sc. F. & Head (MHD)

नई दिल्ली, 8 अगस्त, 2007

आ.सा. 2305.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के विनियम 5 के उपविधम (6) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं :-

अनुसूची

क्रम संख्या	लाइसेंस संख्या	स्वीकृत करने की तिथि/वर्ष/माह	लाइसेंसधारी का नाम व पता	भारतीय मानक का शीर्षक	भा. मा. संख्या	भाग	अनु.	वर्ष
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	8815994	3/5/2007	श्री कृष्णा इंडस्ट्रीज, 192, खूब राम पार्क, फेस-2, प्रेम नगर-1, नांगलोई, दिल्ली-110041	बिजली के छत टाइप पंखे और रेगुलेटर	374			1979
2.	8816087	3/5/2007	पूनम इलैक्ट्रिकल प्राईवेट लिमिटेड, 1207, रिटाला औद्योगिक क्षेत्र, दिल्ली-110085	बिजली के छत टाइप पंखे और रेगुलेटर	374			1979
3.	8815388	7/5/2007	इंडो एशियन फ्यूसगियर लिमिटेड, बी-200, फेस-2, नोएडा, गोतम बुध नगर, उत्तर प्रदेश-201301	ए सी स्थैतिक घाटअवर मोटर	13779			1999

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
4.	8819194	9/5/2007	मैसर्स एम्पायर फनट्रानिक्सा (इंडिया) प्राइवेट लिमिटेड, बी-407, प्रथम एवम् द्वितीय तल, मंगोलपुरी औद्योगिक क्षेत्र, फेस-1 नई दिल्ली-110083	एक फेस लघु एसी और सार्विक बिजली की मोटर	996			1979
5.	8819295	9/5/2007	लक्ष्मी लैम्प इंडस्ट्रीज, ए-76, झिलमिल औद्योगिक क्षेत्र, जी टी रोड, नई दिल्ली-110095	बिजली के बल्ब	418			1978
6.	8819905	14/5/2007	मैसर्स ओजोन डी-6, गुड मंडी, राणाप्रताप बाग, नई दिल्ली-110007	विद्युत प्रयोजनों के लिए दाव संवेदी आसंजक (प्लास्टीकृत पोलीविनायल क्लोराइड टेप, गैर-थर्मोस्टेटिक आसंतक)	7809	3	1	1986
7.	8805486	14/5/2007	मैसर्स देव इलैक्ट्रिकल (इंडिया) बी-20/487, जुलफे बंगाल औद्योगिक क्षेत्र, दिलशाद गार्डन, नई दिल्ली-110095	ए सी स्थैतिक वाटअवर मोटर	13779			1999
8.	8821585	16/5/2007	शीलमार पोलीप्लास्ट (इंडिया) 101, ब्लॉक एस, फेस 1, औद्योगिक क्षेत्र, बादली, दिल्ली-110042	बिजली की वायरिंग के लिए तार नलियाँ	9537	3		1983
9.	8824086	22/5/2007	वानीगोटा इंडस्ट्रीज, 8/59, प्रथम एवम् द्वितीय तल, राम गली, 60 फीट रोड, शाहदरा, दिल्ली-110032	विद्युत प्रयोजनों के लिए दाव संवेदी आसंजक (प्लास्टीकृत पोलीविनायल क्लोराइड टेप, गैर-थर्मोस्टेटिक आसंतक)	7809	3	1	1986
10.	8824839	22/5/2007	एटलस इंडस्ट्रीज, प्रथम तल, 71, एस एस आई, लघु उद्योग नगर, जी टी करनाल रोड, दिल्ली-110033	फ्लड लाइटों के लिए बत्ती उपकरण	10322	5	5	1987
11.	8827294	29/5/2007	शीतल इलैक्ट्रिकल, 61, सावनपार्क एक्सटेंशन, दिल्ली-110052	बिजली की इस्तरी	366			1992

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
12.	8827395	29/5/2007	शीतल इलैक्ट्रिकल, 61, सावनपार्क एक्सटेंशन, दिल्ली-110052	घरेलू और समान बिजली के साधित्रों की सुरक्षा विशिष्ट भाग 2 विशेष अपेक्षाएँ खंड 3 बिजली की इस्तरी	302	2	3	1992
13.	8827803	30/5/2007	रंगीलाल उद्योग, 8/126, ए-करन गली, विशवास नगर, शाहदरा, दिल्ली-110032	बिजली की वायरिंग के लिए तार नलियाँ	9537	3		1983
14.	8828401	30/5/2007	हाइटैक होम ऐप्लाइड, 209, पहली मंजिल, किशन गंज मार्केट, पुराना रोहतक रोड, दिल्ली-110007	घरेलू और समान बिजली के साधित्रों की सुरक्षा विशिष्ट भाग 2 विशेष अपेक्षाएँ खंड 3 बिजली की इस्तरी	302	2	3	1992

[सं. सी एम डी/13 : 11]

ए. के. तलवार, उप महानिदेशक (मुहर)

New Delhi, the 8th August, 2007

S.O. 2305.—In pursuance of sub-regulation (5) of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given in the following Schedule :

SCHEDULE

S. No.	Licence No.	Grant Date	Name & Address of the Party	Title of the Standard	IS No.	Part.	Sec.	Year
1	2	3	4	5	6	7	8	9
1.	8815994	03-05-2007	Shree Krishna Industries, 192, Khub Ram Park, Phase-II, Prem Nagar-I, Nangloi, Delhi-110041.	Electric ceiling type fans & Regulators	374			1979
2.	8816087	03-05-2007	Poonam Electricals (P.) Ltd., 1207, Rithala Indl. Area, Delhi-110085.	Electric ceiling type fans & Regulators	374			1979
3.	8815388	07-05-2007	Indo Asian Fusegear Limited, B-200, Phase-II, Noida, Gautam Buddha Nagar, Uttar Pradesh-201305.	AC static watt-hour meters	13779			1999

1	2	3	4	5	6	7	8	9
4.	8819194	09-05-2007	Empire Fantronics (I) Pvt. Ltd. B-407, 1st & IInd Floor, Mangol Puri, Industrial Area, Phase-I, New Delhi-110083.	Single phase small ac and universal electric motors	996			1979
5.	8819295	09-05-2007	Laxmi Lamp Industries, A-76, Jhilmil Industrial Area, G.T. Road,, Delhi-110095.	Tungsten Filament general service electric lamps	418			1978
6.	8819905	14-05-2007	Ozone, D-6, Gurmandi, Rana Pratap Bagh, Delhi-110007.	Pressure sensitive Adhesive insulating tapes for electrical purposes	7809	3	1	1986
7.	8805486	14-05-2007	Dev Electricals (India), B-20/487, Zulfe Bengal, Industrial Area, Dilshad Garden, Delhi-110095.	Ac static watt-hour meters	13779			1999
8.	8821585	16-05-2007	Shalimar Polyplast (India), 101, Block S, Phase-I, Industrial Area, Badli, Delhi-110042.	Conduits for electrical Installations	9537	3		1983
9.	8824086	22-05-2007	Vanigota Industries, 8/59, First & Second Floor, Ram Gali, 60 Feet Road, Shahdara, Delhi-110032.	Pressure sensitive adhesive insulating tapes for electrical purposes	7809	3	1	1986
10.	8824839	22-05-2007	Atlas Industries, First Floor, 71, SSI Laghu Udyog Nagar, GT Karnal Road, Delhi-110033.	Luminaries for Flood Lights	10322	5	5	1987
11.	8827294	29-05-2007	Shital Electricals, 61, Sawan Park Exten., Delhi-110052.	Electric irons	366			1992
12.	8827395	29-05-2007	Shital Electricals, 61, Sawan Park Exten., Delhi-110052.	Safety of household and similar electrical appliances—Electric Irons	302	2	3	1992
13.	8827803	30-05-2007	Rangilal Udyog, 8/126-A, Karna Gali, Vishwas Nagar, Shahdara, Delhi-110032.	Conduits for electrical installations	9537	3		1983

1	2	3	4	5	6	7	8	9
14.	8828401	30-05-2007	Hi-Tech Home Appliances, 209, First floor, Kishan Ganj Market, Old Rohtak Road, Delhi-110007.	Safety of household and similar electrical appliances—Electric Irons	302	2	3	1992

[No. CMD/13 : 11]

A. K. TALWAR, Dy. Director General (Marks)

नई दिल्ली, 8 अगस्त, 2007

का.आ. 2306.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के विनियम (5) के उपविनियम (6) के अनुसार में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिये गये हैं उन लाइसेंसों को उनके आगे दर्शायी गई तारीख से रद्द/स्थगित कर दिया गया है :--

अनुसूची

क्रम संख्या	लाइसेंस संख्या	लाइसेंसधारी का नाम व पता	लाइसेंस के अंतर्गत वस्तु/प्रक्रम सम्बद्ध भारतीय मानक का शीर्षक	रद्द करने की तिथि
1.	8377188	मार्क एन्टरप्राइजिज प्राईवेट लिमिटेड, (यूनिट-2), 113, बादली औद्योगिक क्षेत्र, फेस-2, दिल्ली-110042	स्टेशनरी स्टोरेज टाईप पानी के लिए	07-05-07

[सं. सीएमडी/13 : 13]

ए. के. तलवार, उप महानिदेशक (मुहर)

New Delhi, the 8th August, 2007

S.O. 2306.—In pursuance of sub-regulation (6) of the regulation 5 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies that the licences particulars of which are given below have been cancelled/suspended with effect from the date indicated against each :

SCHEDULE

S.No.	Licence No.	Name & Address of the Licences	Article/Process with relevant Indian Standards covered by the licence cancelled	Date of Cancellation
1	8377188	Marc Enterprises Pvt. Ltd., (Unit-II), 113, Badli Industrial Area, Phase-II, Delhi-110042.	Stationary storage type electric water heater	07-05-2007

[No. CMD/13 : 13]

A. K. TALWAR, Dy. Director General (Marks)

कोयला मंत्रालय

नई दिल्ली, 8 अगस्त, 2007

का.आ. 2307.—केन्द्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार के कोयला मंत्रालय की अधिसूचना, संख्यांक का.आ 3629 तारीख 4 सितंबर, 2006 में जो 9 सितंबर, 2006 को राजपत्र में प्रकाशित की हुई थी, निम्नलिखित संशोधन करती है अर्थात् :—

उपरोक्त अधिसूचना की उपाबद्ध अनुसूची में क्र.सं. 3 के सामने :—

- (1) स्तंभ 4 में, विद्यमान प्रविष्टियों के स्थान पर “कोयला नियंत्रक” प्रविष्टि रखी जाएगी;
- (2) स्तंभ 5 में, विद्यमान प्रविष्टियों के स्थान पर निम्नलिखित प्रविष्टियाँ रखी जाएंगी, अर्थात् :—
“कोयला नियंत्रक 1 कौंसिल हाउस स्ट्रीट, कोलकाता (पश्चिमी बंगाल)”

[मिसिल सं. 43015/7/2005-पीआरआईडब्ल्यू-1]

एम. शहाबुद्दीन, अवर सचिव

MINISTRY OF COAL

New Delhi, the 8th August, 2007

S.O. 2307.—In exercise of the powers conferred by section 3 of the Coal Bearing Areas (Acquisition and Development) Act, 1957, the Central Government hereby makes the following amendment in the notification of the Government of India in the Ministry of Coal vide number S.O. 3629 dated 4th September, 2006 and published in the Gazette of India dated 9th September, 2006 namely :—

In the Schedule annexed to the said notification against Sl. No. 3,—

- (1) in column 4, for the existing entries, the entry “Coal Controller” shall be substituted ;
- (2) in column 5, for the existing entries, the following entries shall be substituted, namely :—
“Coal Controller, 1, Council House Street, Kolkata, (West Bengal)”

[F.No. 43015/7/2005-PRW-I]

M. SHAHABUDEEN, Under Secy.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 8 अगस्त, 2007

का.आ. 2308.—केन्द्रीय सरकार को लोकहित में यह आवश्यक प्रतीत होता है कि गेल (इण्डिया) लिमिटेड द्वारा प्राकृतिक गैस के परिवहन के लिए महाराष्ट्र राज्य में दहेज-हजीरा-उरान एवं स्पर पाइपलाइन (कारगाँव-पुणे सैक्शन) परियोजना बिछाई जानी चाहिए ;

और केन्द्रीय सरकार को उक्त पाइपलाइन बिछाने के प्रयोजन के लिए यह आवश्यक प्रतीत होता है कि उस भूमि में, जिसमें उक्त पाइपलाइन बिछाए जाने का प्रस्ताव है और जो इस अधिसूचना से संलग्न अनुसूची में वर्णित है, उपयोग के अधिकार का अर्जन किया जाए;

अतः, अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उस भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है;

कोई व्यक्ति, जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है, उस तारीख से जिसको उक्त अधिनियम की धारा 3 की उपधारा (1) के अधीन भारत के राजपत्र में यथा प्रकाशित इस अधिसूचना की प्रतियाँ साधारण जनता को उपलब्ध करा दी जाती हैं, इक्कीस दिन के भीतर, भूमि के नीचे पाइपलाइन बिछाए जाने के संबंध में, श्री वी.बी. मोरे, सक्षम प्राधिकारी, गेल (इण्डिया) लिमिटेड, द्वितीय तल, एम.टी. एन.एल. दूरभाष केन्द्र भवन, सी.बी.डी. बेलपुर रेलवे स्टेशन के समाने, सेक्टर-11, नवी मुम्बई-400 614 (महाराष्ट्र) को लिखित रूप में आक्षेप भेज सकेगा।

कारगाव ते पूणे गैस पाइप लाइन**3(1) अनुसूची**

जिला	तालुका	गांव	स.नं	हक्क संपादित क्षेत्र
पूणे	मावल	इंदूरी	417	00-12-00
			419	00-36-00
			526	00-20-00
पूणे	मावल	डोंगरगांव	208	00-00-50
			218	00-01-50
			219	00-04-50
			226	00-09-50
			228	00-15-00
			266	00-22-00
पूणे	मावल	मुंढावरे	115	00-56-00
पूणे	मावल	वलक	86	00-45-00
			87	00-05-00

[फा. सं. एल-14014/8/07-जी.पी.]

एस. बी. मण्डल, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 8th August, 2007

S.O. 2308.—Whereas it appears to the Central Government that it is necessary in public interest that for transportation of natural gas through Dahej-Hazira-Uran and Spur Pipeline (Kargaon-Pune Section) project in the State of Maharashtra, a pipeline should be laid by GAIL (India) Limited;

And, whereas it appears to the Central Government that for the purpose of laying the said pipeline, it is necessary to acquire the Right of User in the land under which the said pipeline is proposed to be laid and which is described in the Schedule annexed to this notification;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962, the Central Government hereby declares its intention to acquire the right of user therein.

Any person interested in the land described in the said Schedule may, within twenty one days from the date which the copies of the notification issued under sub-section (1) of Section 3 of the said Act, as published in the Gazette of India are made available to the general public, object in writing to the laying of the pipeline under the land to Shri V.B. More, Competent Authority, GAIL (India) Limited, 2nd Floor, MTNL Telephone Exchange Building, Opposite CBD Belapur Railway Station, Sector-11, Navi Mumbai-400614 (Maharashtra).

KARGAON TO PUNE GAS PIPE LINE

3(1) SCHEDULE

District	Taluka	Village	S. No.	Area to be acquired
Pune	Maval	Induri	417	00-12-00
			419	00-36-00
			526	00-20-00
Pune	Maval	Dongargaon	208	00-00-50
			218	00-01-50
			219	00-04-50
			226	00-09-50
			228	00-15-00
			266	00-22-00
Pune	Mava	Mundhavare	115	00-56-00
Pune	Maval	Valak	86	00-45-00
			87	00-05-00

[F. No. L-14014/8/07-G.P.]

S. B. MANDAL, Under Secy.

नई दिल्ली, 8 अगस्त, 2007

का.आ. 2309.—केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 3 की उपधारा (1) के अधीन जारी भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्या का. आ. 620 तारीख 26 फरवरी, 2007 द्वारा, उस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में गेल (इण्डिया) लिमिटेड द्वारा राजस्थान राज्य में विजयपुर-कोटा एवं स्पर पाइपलाइन परियोजना के माध्यम से प्राकृतिक गैस के परिवहन के लिए पाइपलाइन बिछाने के

प्रयोजन के लिए उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा की थी;

और उक्त राजपत्रित अधिसूचना की प्रतियां जनता को तारीख 4-4-2007 से 8-4-2007 तक उपलब्ध करा दी गई थीं;

और पाइपलाइन बिछाने के संबंध में जनता से कोई आक्षेप प्राप्त नहीं हुए;

और सक्षम प्राधिकारी ने, उक्त अधिनियम की धारा 6 की उपधारा (1) के अधीन केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है;

और केन्द्रीय सरकार ने, उक्त रिपोर्ट पर विचार करने के पश्चात् और यह समाधान हो जाने पर कि उक्त भूमि पर पाइपलाइन बिछाने के लिए अपेक्षित हैं, उस में उपयोग के अधिकार का अर्जन करने का विनिश्चय किया है;

अतः, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह घोषणा करती है कि इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में पाइपलाइन बिछाने के लिए उपयोग के अधिकार का अर्जन किया जाता है;

और, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, निर्देश देती है कि पाइपलाइने बिछाने के लिए भूमि में उपयोग का अधिकार, इस घोषणा के प्रकाशन की तारीख को, केन्द्रीय सरकार में निहित होने की बजाए, पाइपलाइन बिछाने का प्रस्ताव करने वाली गेल (इण्डिया) लिमिटेड में निहित होगा और तदुपरि, भूमि में ऐसे उपयोग का अधिकार, इस प्रकार अधिरोपित निबंधनों और शर्तों के अधीन रहते हुए, सभी विल्लिंगमों से मुक्त, गेल (इण्डिया) लिमिटेड में निहित होगा।

अनुसूची

जिला	तहसील	गांव	सर्वे नं.	आर.ओ.यू. अर्जित करने के लिए क्षेत्रफल (हैक्टेयर में)
1	2	3	4	5
1.	छबड़ा	बटावदापार	950	0.6050
			929	0.4040
			931	0.0200
			916	0.0260
			917	0.2820
			योग	1.3370
2.	अन्ता	तामखेड़ा	54	0.1530
			83	0.0500
			52	0.0880
			50	0.0080
			51	0.0800
			योग	0.3790

1	2	3	4	5
बारं	अन्ता	अन्ता	546	0.0750
			553	0.0180
			552	0.0450
			551	0.1680
			550	0.1680
			योग	0.3260
	पलायथा		1221	0.7374
			योग	0.7374

[फा. सं. एल-14014/16/06(जी.पी.-पार्ट II)]

एस. बी. मण्डल, अवर सचिव

New Delhi, the 8th August, 2007

S.O. 2309.—Whereas by notification of Government of India in Ministry of Petroleum and Natural Gas number S.O. 620 dated 26th February, 2007 issued under sub-section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of Users in Land) Act, 1962 (50 of 1962) (hereinafter referred to as the said Act), the Central Government declared its intention to acquire the right of user in the land specified in the Schedule appended to that notification for the purpose of laying pipeline for transport of natural gas through Vijaipur-Kota and spur pipeline project in the State of Rajasthan by GAIL (India) Limited;

And whereas copies of the said Gazette notification were made available to the public from 4-4-2007 to 8-4-2007;

And whereas no objections were received from the public to the laying of the pipeline;

And whereas the Competent Authority has, under sub-section (1) of Section 6 of the said Act, submitted its report to the Central Government;

And whereas the Central Government has, after considering the said report, decided to acquire the Right of User in the lands specified in the Schedule;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 6 of the said Act, the Central Government hereby declares that the Right of User in the land specified in the Schedule is hereby acquired for laying the pipeline;

And, further, in exercise of the powers conferred by sub-section (4) of Section 6 of the said Act, the Central Government hereby directs that the Right of User in the said land for laying the pipeline shall, instead of vesting in the Central Government, vest, on this date of the publication of the declaration, in the GAIL (India) Limited, free from all encumbrances.

SCHEDULE

District	Tehsil	Village	Survey No.	Area to be acquired for ROU (in Hectare)
	Chabra	Batawdapar	950	0.6050
			929	0.4040
			931	0.0200
			916	0.0260
			917	0.2820
			Total	1.3370
	Anta	Tamkheda	54	0.1530
			83	0.0500
			52	0.0880
			50	0.0080
			51	0.0800
			Total	0.3790
Baran	Anta	Anta	546	0.0750
			553	0.0180
			552	0.0450
			551	0.1680
			550	0.0200
			Total	0.3260
		Plaitha	1221	0.7374
			Total	0.7374

[F.No. L-14014/16/06-(G.P. Part-II)]

S.B. MANDAL, Under Secy.

नई दिल्ली, 14 अगस्त, 2007

का.आ. 2310.—केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 3 की उपधारा (1) के अधीन जारी भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्या का. आ. 1733 तारीख 3-5-2006 द्वारा, उस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में गेल (इण्डिया) लिमिटेड द्वारा महाराष्ट्र राज्य में दहेज-हजीरा-उरान एवं स्पर पाइपलाइनों के माध्यम से प्राकृतिक गैस के परिवहन के लिए पाइपलाइन बिछाने के प्रयोजन के लिए उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा की थी;

और उक्त राजपत्रित अधिसूचनाओं की प्रतियां जनता को तारीख 1-3-2007 से 27-5-2007 तक उपलब्ध करा दी गई थी;

और सक्षम प्राधिकारी ने, उक्त अधिनियम की धारा 6 की उपधारा (1) के अधीन केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है;

और केन्द्रीय सरकार ने, उक्त रिपोर्ट पर विचार करने के पश्चात् और यह समाधान हो जाने पर कि उक्त भूमि पाइपलाइनें बिछाने के लिए अपेक्षित हैं, उसमें उपयोग के अधिकार का अर्जन करने का विनिश्चय किया है;

और उक्त अधिनियम की धारा 3 की उपधारा (1) के अन्तर्गत अधिसूचना संख्या का. आ. 1733 तारीख 3-5-2006 द्वारा अधिसूचित भूमि में से कुछ भूमि की अधिसूचना उक्त अधिनियम की धारा 6 की उपधारा (1) के अन्तर्गत का. आ. 1042(अ) तारीख 27-6-2007 द्वारा की जा चुकी है;

अतः, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह घोषणा करती है कि इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में पाइपलाइनें बिछाने के लिए उपयोग के अधिकार का अर्जन किया जाता है;

और, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, निर्देश देती है कि पाइपलाइनें बिछाने के लिए भूमि में उपयोग का अधिकार, इस घोषणा के प्रकाशन की तारीख को, केन्द्रीय सरकार में निहित होने की बजाए, पाइपलाइन बिछाने का प्रस्ताव करने वाली गेल (इण्डिया) लिमिटेड में निहित होगा और तदुपरि, भूमि में ऐसे उपयोग का अधिकार, इस प्रकार अधिरोपित निबंधनों और शर्तों के अधीन रहते हुए, सभी विल्लंगमों से मुक्त, गेल (इण्डिया) लिमिटेड में निहित होगा।

अनुसूची

जिला	तहसील	गांव	सर्वे नं.	आर.ओ.यू. अर्जित करने के लिए क्षेत्रफल (हेक्टेयर में)
1	2	3	4	5
रायगड	खालापूर	रीस	119	00-36-67
			59	00-20-47
			135	00-18-52
			125	00-00-90
			134	00-32-99
			131	00-07-83
			130	00-08-43
			163	00-27-41
			162	00-20-98
			160	00-22-35

1	2	3	4	5
रायगड	खालापूर	काम्बे	20	00-30-75
			98	00-04-75
			125	00-06-00
			97	00-08-25
रायगड	खालापूर	वट	66	00-01-75
			7	00-00-25
रायगड	खालापूर	बोरीवली	15/1	00-02-00
रायगड	खालापूर	वाशिवली	78	00-07-50
			23	00-01-40
			54	00-20-75
			55	00-00-95
			53/1	00-01-00
			52/2	00-00-25
रायगड	खालापूर	वडगाव	66	00-09-78
			65	00-06-50
			17/0	00-58-71
			35	00-03-11

[फा. सं. एल-14014/10/07-जी.पी.]

एस. बी. मण्डल, अवर सचिव

New Delhi, the 14th August, 2007

S.O. 2310.—Whereas by notification of Government of India in Ministry of Petroleum and Natural Gas number S.O. 1733 dated 3-5-2006 issued under sub-section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of Users in Land) Act, 1962 (50 of 1962) (hereinafter referred to as the said Act), the Central Government declared its intention to acquire the right of user in the land specified in the Schedule appended to that notification for the purpose of laying pipeline for transport of natural gas through Dahej-Hazira-Uran and its spur pipelines in the State of Maharashtra by GAIL (India) Limited;

And whereas copies of the said Gazette notification were made available to the public from 1-3-2007 to 24-5-2007;

And whereas the Competent Authority has, under sub-section (1) of Section 6 of the said Act, submitted its report to the Central Government.

And whereas the Central Government has, after considering the said report, decided to acquire the Right of User in the lands specified in the Schedule;

And whereas part of the land notified under sub-section (1) of Section 3 of the said Act vide S.O. 1733 dated 3-5-2006 has been earlier notified under sub-section (1) of Section 6 of the said Act vide S.O. 1042(E) dated 27-6-2007;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 6 of the said Act, the Central Government hereby declares that the Right of User in the land specified in the Schedule is hereby acquired for laying the pipeline;

And, further, in exercise of the powers conferred by sub-section (4) of Section 6 of the said Act, the Central Government hereby directs that the Right of User in the said land for laying the pipeline shall, instead of vesting in the Central Government, vest, on this date of the publication of the declaration, in the GAIL (India) Limited, free from all encumbrances.

SCHEDULE

District	Taluka	Village	Survey No.	Area to be acquired for ROU (in Hectare)
Raigad	Khalapur Ris		119	00-36-67
			59	00-20-47
			135	00-18-52
			125	00-00-90
			134	00-32-99
			131	00-07-83
			130	00-08-43
			163	00-27-41
			162	00-20-98
			160	00-22-35
Raigad	Khalapur Kambe		20	00-30-75
			98	00-04-75
			125	00-06-00
			97	00-08-25
Raigad	Khalapur Vat		66	00-01-75
			7	00-00-25
Raigad	Khalapur Borivali		15/1	00-02-00
Raigad	Khalapur Vashivali		78	00-07-50
			23	00-01-40
			54	00-20-75
			55	00-00-95
			53/1	00-01-00
			52/2	00-00-25
			66	00-09-78
			65	00-06-50
			17/0	00-58-71
			35	00-03-11
Raigad	Khalapur Vadgaon			

[F.No.L-14014/10/07-G.P.]

S.B. MANDAL, Under Secy.

नई दिल्ली, 14 अगस्त, 2007

का.आ. 2311.—केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 2 के खंड (क) के अनुसरण में भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्या का. आ. 2792 तारीख 18 जुलाई, 2006 द्वारा, श्री वाई. के. छोकर, तहसीलदार को हरियाणा एवं पंजाब राज्य में मैसर्स गेल (इण्डिया) लिमिटेड द्वारा पाइपलाइन बिछाने के लिए उक्त अधिनियम के अधीन सक्षम प्राधिकारी के कृत्यों का पालन करने के लिए नियुक्त किया गया था;

और उक्त श्री वाई. के. छोकर का स्थानांतरण हो गया है और श्री के.एल. बिशनोई को उनके पद पर नियुक्त किया गया है;

और उक्त श्री वाई. के. छोकर की मैसर्स गेल (इण्डिया) लिमिटेड में अतिरिक्त कार्य भार समाप्त कर दिया गया है;

अतः अब, केन्द्रीय सरकार उक्त अधिनियम की धारा 2 के खंड (क) के अनुसरण में और भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना सं. का.आ. 2792 तारीख 18-7-2006 को अधिकांत करते हुए, नीचे दी गई अनुसूची के स्तंभ (1) में वर्णित व्यक्ति को उक्त मैसर्स गेल (इण्डिया) लिमिटेड द्वारा पाइपलाइन बिछाने के लिए निम्नलिखित अनुसूची के स्तंभ (2) में वर्णित क्षेत्र में उक्त अधिनियम के अधीन सक्षम प्राधिकारी के कृत्यों का पालन करने के लिए नियुक्त करती है।

अनुसूची

व्यक्ति का नाम और पता	अधिकारिता का क्षेत्र
(1)	(2)
श्री के. एल. बिशनोई, तहसीलदार, मैसर्स गेल (इण्डिया) लिमिटेड में प्रतिनियुक्ति पर बो-35-36, सेक्टर-1, जिला गौतमबुद्ध नगर, नोएडा-201301 (उत्तर प्रदेश)	सम्पूर्ण हरियाणा राज्य के साथ पंजाब राज्य

[फा. सं. एल-14014/7/05-जी.पी.]

एस. बी. मण्डल, अवर सचिव

New Delhi, the 14th August, 2007

S.O. 2311.—Whereas, in pursuance of clause (a) of Section 2 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government vide Notification of Government of India in the Ministry of Petroleum and Natural Gas S.O. 2792 dated 18th July, 2006 appointed Shri Y. K. Chhokar, Tehsildar to perform the functions of the Competent Authority under the said Act for laying of the pipeline by M/s. GAIL (India) Limited in the State of Haryana and Punjab.

And, whereas, Shri Y. K. Chhokar has been transferred and Shri K. L. Bishnoi has been posted as his incumbent;

And, whereas, the deputation of the said Shri Y. K. Chhokar with M/s. GAIL (India) Limited has come to an end;

Now, therefore, in pursuance of clause (a) of Section (2) of the said Act and in supersession of the notification of the Government of India, Ministry of Petroleum and Natural Gas vide S.O. 2792 dated 18-7-2006, the Central Government hereby authorizes the person mentioned in column (1) of the schedule given below to perform the functions of the Competent Authority under the said Act for laying pipelines by the said M/s. GAIL (India) Limited in the area mentioned in column (2) of the said schedule.

SCHEDULE

Name and Address of the person	Area of Jurisdiction
(1)	(2)
Shri K.L. Bishnoi, Tehsildar On deputation to M/s. GAIL (India) Limited, B-35 and 36, Sector-1, Distt. Gautam Budh Nagar, Noida-201301 (Uttar Pradesh)	Whole State of Haryana and Punjab

[F.No.L-14014/71/05-G.P.]

S. B. MANDAL, Under Secy.

नई दिल्ली, 17 अगस्त, 2007

का.आ. 2312.—केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 3 की उपधारा (1) के अधीन जारी की गई भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्या का.आ. 849 दिनांक 23 मार्च, 2007 जो भारत के राजपत्र दिनांक 24 मार्च, 2007 में प्रकाशित की गई थी, द्वारा तालुक : होसकोटे, देवनहल्ली एवं यलहंका, जिला : बेंगलूर ग्रामीण और बेंगलूर शहरी में उस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में कर्नाटक राज्य में देवनगोंदी से बेंगलूर न्यू इंटरनेशनल एयरपोर्ट देवनाहल्ली तक एविएशन टर्बाइन ईंधन के परिवहन के लिए इंडियन ऑयल कॉर्पोरेशन लिमिटेड द्वारा पाइपलाइन बिछाने के प्रयोजन के लिए उपयोग के अधिकार का अर्जन के अपने आशय की घोषणा की थी;

और उक्त राजपत्र अधिसूचना की प्रतियां जनता को दिनांक 11 मई, 2007 को उपलब्ध करा दी गई थीं;

और सक्षम प्राधिकारी ने, उक्त अधिनियम की धारा 6 की उपधारा (1) के अधीन, केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है;

और केन्द्रीय सरकार ने, उक्त रिपोर्ट पर विचार करने के पश्चात्, इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि पाइपलाइन बिछाने के लिये अपेक्षित है, उसमें उपयोग के अधिकार का अर्जन करने का विनिश्चय किया है;

अतः अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह घोषणा करती है कि इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में पाइपलाइन बिछाने के लिए उपयोग के अधिकार का अर्जन किया जाए;

और केन्द्रीय सरकार उक्त अधिनियम की धारा 6 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निर्देश देती है कि उक्त भूमि में उपयोग का अधिकार इस घोषणा के प्रकाशन की तारीख से केन्द्रीय सरकार में निहित होने की बजाए, सभी विल्लंगों से मुक्त होकर इंडियन ऑयल कारपोरेशन लिमिटेड में निहित होगा।

अनुसूची

तालूका : होसकोटे जिला : बेंगलूर रूरल राज्य : कर्नाटक

गांव का नाम	सर्वे नंबर	हिस्सा नंबर	क्षेत्रफल हेक्टर आर वर्ग मीटर
1	2	3	4 5 6
होब्ली : जडीगेनहल्ली			
तरबहल्ली	23	पी1	0 74 15
	23	पी2	- - -
	23	पी3	- - -
	23	पी4	- - -
	23	पी5	- - -
	20	2	0 06 97
	20	1	0 12 66
	36	-	0 03 85
	35	3	0 07 27
	26	3	0 14 21
	35	1	0 01 34
	31	2	0 06 79
	32	3	0 03 87
	31	1	0 00 29
	30	2	0 15 78
	30	1	0 00 26
परमनहल्ली	120	-	0 05 04
	116	-	0 06 35
	115	-	0 11 69
	111	1	0 04 63
	110	2	0 02 65
	125	-	0 04 96
	126	-	0 01 28
	109	1	0 02 57
	128	-	0 13 83
	135	-	0 08 05
	139	-	0 22 07
	144	-	0 06 14
	145	1	0 08 94
	146	3	0 02 66

1	2	3	4	5	6	1	2	3	4	5	6
परमनहल्ली	146	1	0	03	94	वडीगेहल्ली	69	4	0	01	04
	150	2	0	06	28		68	1	0	07	80
	149	2	0	00	15		68	2	0	04	58
	150	1	0	06	48		65	-	0	07	95
	151	4	0	05	46		64	-	0	05	44
	151	3	0	09	01		63	6	0	04	66
	184	-	0	08	24		78	-	0	01	40
	179	-	0	04	11		79	-	0	07	22
वागटा अग्रहारा	32	-	0	04	94		81	-	0	55	56
	31	-	0	03	06		81	पी1	-	-	-
	30	-	0	02	88		81	पी2	-	-	-
	29	-	0	02	25		81	पी3	-	-	-
	25	-	0	03	98		85	-	0	02	44
	24	-	0	02	95		84	-	0	03	46
	23	-	0	02	84		82	-	0	06	23
	18	2ए	0	00	31		86	1	0	07	55
	19	1	0	06	01		86	2	0	01	35
	19	2	0	04	06		89	-	0	11	67
	20	-	0	09	26	जडीगेनहल्ली	183	-	0	54	42
वागटा	10	1बी	0	09	72		185	-	0	70	13
	9	-	0	17	86	हरलूर	52	-	0	07	37
	7	-	0	19	97		51	2	0	11	30
	6	-	0	00	52		51	1	0	03	80
होनचनहल्ली	32	6	0	02	76		49	1डी	0	06	30
	32	5	0	02	13		49	1सी	0	00	99
	32	2	0	02	37		57	-	0	14	83
	32	1	0	01	91		47	-	0	00	10
गोंवींदपुरा	66	2	0	03	00		61	1	0	07	10
	66	1	0	03	20		61	2ए	0	04	54
	67	-	0	06	16		61	2बी	0	08	20
	68	4	0	06	34		62	1	0	04	09
	68	3	0	02	73		62	2ए	0	01	52
	68	2	0	03	75		62	2बी	0	01	42
	68	1	0	01	20		62	2सी	0	01	43
	69	-	0	20	88		62	2डी	0	01	94
	70	1	0	01	57		34	3	0	00	10
	70	2	0	01	65		34	2	0	02	39
	71	-	0	08	53		30	1	0	00	74
	72	-	0	00	28		30	2	0	05	30
	73	-	0	12	31		31	1	0	00	65
	74	2ए	0	03	03		31	2	0	04	12
	74	2बी	0	05	04		25	3ए	0	01	82
	75	1	0	03	45		25	3बी	0	01	87
वडीगेहल्ली	71	4	0	01	90		26	-	0	00	53
	71	3	0	04	29		25	2	0	02	63
	71	2	0	03	49		25	1	0	01	90
	71	1	0	02	60		23	4	0	01	63
	75	-	0	06	11						

1	2	3	4	5	6	1	2	3	4	5	6
हरलूर	23	3	0	01	13	कोलतूर	24	-	0	06	05
	23	2	0	01	87		177	-	0	09	88
	23	1	0	00	19		174	1	0	09	49
	16	2	0	11	19		173	1	0	00	66
	9	पी1	0	01	35	हलसहल्ली	20	-	0	03	76
	9	1पी	-	-	-	हुल्लूर अमनीकरे	142	6	0	04	31
	9	2पी	-	-	-		142	5	0	02	99
	9	3पी	-	-	-		126	पी1	0	10	47
होब्ली : कसबा							126	पी2	-	-	-
कोलतूर	103	1	0	08	24		126	पी3	-	-	-
	103	2	-	-	-		125	पी1	0	03	85
	198	1	0	11	62		125	पी2	-	-	-
	209	-	0	25	51		125	पी3	-	-	-
	117	-	0	08	06		129	-	0	03	94
	104	-	0	08	09		118	2	0	02	25
	106	2	0	03	73		118	1	0	05	08
	105	-	0	17	29		114	3	0	03	70
	83	1	0	19	49		114	2	0	01	29
	70	1	0	00	20		115	2	0	05	79
	71	2	0	11	74		115	1	0	02	86
	71	1	0	08	93		113	3	0	05	34
	73	-	0	05	98		113	2	0	01	67
	74	2	0	02	18		113	1पी1	0	04	72
	74	1	0	01	69	दोड्ड हुल्लूर	32	8बी	0	00	36
	7	-	0	10	89		32	8ए	0	00	96
	8	-	0	12	69		32	7ए	0	01	27
	10	1	0	14	17		32	6	0	01	98
	12	2	0	00	19		32	5	0	00	91
	187	3	0	04	46		32	4	0	00	85
	186	-	0	05	76		32	3	0	02	23
	184	1	0	07	23		41	3	0	00	62
	183	-	0	04	43		38	-	0	05	35
	182	6	0	00	29		39	-	0	00	34
	182	5	0	04	57		37	-	0	05	48
	181	3	0	09	83		36	-	0	00	28
	181	2	0	00	77		33	4	0	09	47
	180	4	0	05	55		33	1	0	05	34
	180	3	0	09	42		46	3	0	01	42
	180	2	0	01	29		46	1	0	05	27
	19	2	0	05	57		47	1	0	00	15
	19	1	0	02	33		59	2	0	11	58
	20	6	0	02	65		59	1	0	05	22
	20	5	0	01	20		58	1ए	0	03	13
	20	4	0	01	39		75	5	0	05	56
	20	3	0	01	56		75	2	0	06	16
	21	2	0	01	18		75	1	0	00	10
	21	1	0	09	01		129	1	50	06	60
	22	-	0	00	18						

1	2	3	4	5	6	1	2	3	4	5	6
यलचनायकनपुरा	17	2	0	01	91	वाबसंदा	60	-	0	00	83
	16	-	0	09	32		62	1	0	05	68
	15	-	0	10	78		62	3	0	00	48
	14	-	0	05	55		62	2	0	06	38
	9	2	0	03	07	लक्कोडहल्ली	49	1	0	06	66
	9	1	0	06	77		48	2	0	02	16
	8	3	0	04	15		48	1	0	04	00
	8	2	0	04	13		45	5	0	02	26
	8	1	0	04	24		45	2	0	04	55
	7	2	0	06	26		45	1	0	04	32
	7	1	0	03	75		44	-	0	06	40
	6	1	0	17	63		40	4	0	01	04
	2	-	0	00	21		43	1	0	00	16
	1	-	0	41	21		41	3	0	11	43
चिक्काहुल्लूर	25	पी1	0	23	04		39	1	0	03	31
	25	पी2	-	-	-		39	5	0	03	49
	25	पी4	-	-	-		38	2	0	04	28
	25	पी5	-	-	-		38	1	0	04	23
कुरुबरहल्ली	104	-	0	39	06		31	-	0	08	11
	107	-	0	23	41		28	-	0	07	48
	108	-	0	13	61		27	4	0	05	50
	109	-	0	07	34		27	3	0	01	57
	110	-	0	12	73		26	1	0	09	91
	106	-	0	21	81		25	-	0	07	51
कल्लहल्ली	158	-	0	08	71	होब्ली : सुलिबेले					
	157	2	0	03	19	कंबलीपुरा	166	-	0	04	09
	157	1	0	04	65		167	-	0	05	79
	156	-	0	07	60		168	-	0	00	75
	155	-	0	07	28		169	-	0	02	52
	154	-	0	11	81		170	-	0	03	61
	149	-	0	12	39	हसीगाला	40	3	0	02	29
	150	1	0	02	45		40	1	0	01	43
	150	2	0	09	17		39	3	0	02	95
	147	-	0	15	99		39	2	0	08	26
वाबसंदा	52	-	0	04	46		174	1	0	02	24
	51	2	0	08	98		174	2	0	01	64
	51	1	0	04	85		174	3	0	02	54
	50	1	0	03	84		32	1	0	05	15
	49	-	0	02	71		31	-	0	09	30
	47	-	0	09	16		24	2	0	03	34
	57	-	0	15	33		25	-	0	03	71
	58	1सी	0	00	48		26	3	0	01	57
	59	5	0	03	58		27	-	0	02	76
	59	4	0	04	36		28	5	0	01	70
	59	3	0	04	68		28	1	0	01	17
	59	2	0	03	44		4	7	0	02	06
	59	1	0	03	69		4	2	0	02	23
	62	4	0	05	43		3	3	0	04	88
							169	2	0	06	95

1	2	3	4	5	6	1	2	3	4	5	6
हसीगाला	169	1	0	05	90	चौडप्पनहल्ली	5	2	0	04	12
	168	-	0	01	89		5	1	0	05	87
	120	-	0	02	92		6	2	0	01	36
	122	1	0	03	46		6	1	0	04	57
	123	-	0	03	79		7	-	0	08	12
	124	4	0	02	25		15	-	0	06	31
	112	-	0	03	64		16	-	0	08	34
	127	2	0	03	58		13	1	0	06	08
	127	4	0	00	99		17	1	0	05	67
	109	1	0	00	47		18	2	0	07	09
	128	-	0	08	03		18	1	0	06	56
	130	1	0	02	97		20	-	0	05	67
	130	2	0	06	27		12	3	0	07	69
	130	3	0	00	19	सोमत्तनहल्ली	140	7	0	10	20
	132	3सी	0	00	53		141	11	0	01	51
	132	1सी	0	00	70		141	4	0	16	99
	132	3डी	0	00	37		141	8	0	00	10
	132	3बी	0	00	10		141	3	0	03	15
	132	1डी	0	01	56		142	-	0	18	72
	132	1बी	0	02	42		137	-	0	12	40
	132	2	0	04	73		136	-	0	11	41
	146	2	0	03	05		148	-	0	47	76
	142	2	0	10	32	जोन्नहल्ली	149	-	0	51	06
	142	1	0	06	50		63	-	0	22	75
	143	2	0	02	58	कगलहल्ली	2	-	0	13	85
	139	पी1	0	14	27	भटमरेनहल्ली	34	-	0	03	69
	139	पी2	-	-	-		33	-	0	14	79
	139	पी3	-	-	-		27	-	0	16	28
	139	पी4	-	-	-		25	-	0	00	15
कम्मसंद्रा	108	पी	0	74	54		24	-	0	02	79
	67	1	0	00	11		23	-	0	00	99
	68	4	0	00	19		26	-	0	09	95
	78	2	0	00	87		5	1	0	09	57
तालूका : देवनहल्लि							5	2	0	04	74
होब्ली : चन्नरायपट्टणा							6	3	0	07	28
गंगावारा-	44	2	0	00	29		6	2ए	0	02	69
चौडप्पनहल्ली	44	3	0	06	66		6	2बी	0	00	38
	46	-	0	07	61		10	1	0	13	87
	45	-	0	06	78		10	2	-	-	-
	42	-	0	04	28		10	3	-	-	-
	41	-	0	03	60		10	4	-	-	-
	31	-	0	06	78		10	5	-	-	-
	32	3	0	01	56	कावडदासनहल्ली	21	-	0	73	28
	32	4	0	04	92		18	-	0	16	74
	30	-	0	02	96		19	-	0	04	16
	32	1	0	05	31	तालूका : यलहंका जिला : बेंगलोर अर्बनराज्य :					
	4	-	0	01	60	होब्ली : जाला					
						दुम्पनहल्ली	21	-	0	08	18

1	2	3	4	5	6	1	2	3	4	5	6
दुम्नहल्ली	20	-	0	19	88	चिक्कनहल्ली	31	2	0	01	41
	19	-	0	12	81		31	1	0	06	61
	39	-	0	00	10	बेंगुरु	90	2	9	08	09
	40	-	0	35	37		95	2	0	04	71
उनसुरु	8	1	0	15	28		95	1	0	05	14
	8	2पी1	-	-	-		94	-	0	08	24
	8	2पी2	-	-	-		100	1	0	14	80
	8	2पी3	-	-	-		101	2	0	04	76
	109	-	0	05	28		101	1	0	13	46
	108	-	0	10	16		84	1	0	16	17
	107	-	0	06	95		84	2	-	-	-
	106	-	0	07	57		85	-	0	11	53
	105	-	0	00	50	[फा. सं. आर-25011/3/2007-ओ. आर-1]					
	5	-	0	18	14	एस. के. चिटकारा, अवर सचिव					
	4	7	0	07	73	New Delhi, the 17th August, 2007					
	4	2	0	01	94	S.O. 2312.—Whereas by the notification of the					
	4	1	0	02	79	Government of India, in the Ministry of Petroleum and					
	113	-	0	00	78	Natural Gas S.O. number 849 dated the 23rd March, 2007;					
	88	-	0	05	34	issued under sub-section (1) of Section 3 of the Petroleum					
मैलनहल्ली	26	1	0	24	89	and Minerals Pipelines (Acquisition of Right of User in					
	26	2	-	-	-	Land) Act, 1962 (50 of 1962), (herein after referred to as the					
	116	-	0	24	50	said Act), published in the Gazette of India dated the 24th					
	18	-	0	08	22	March, 2007, the Central Government declared its intention					
	14	-	0	28	87	to acquire the right of user in the lands in Taluk : Hosakote,					
	19	-	0	20	60	Devanahalli & Yalahanka, District: Bangalore Rural &					
	6	2	0	10	94	Bangalore Urban in the State of Karnataka specified in the					
	6	1ए	0	07	62	Schedule appended to that notification for the purpose of					
	6	1बी	-	-	-	laying pipeline for the transportation of Aviation Turbine					
	5	-	0	05	08	Fuel in the State of Karnataka from Devanagondhi to					
	1	-	0	16	65	Bangalore New International Airport, Devanahalli by the					
	2	3	0	07	15	Indian Oil Corporation Limited.					
	2	4	0	07	37	And whereas, the copies of the said Gazette					
	110	3	0	05	33	Notification were made available to the public on the 11th					
चिक्कनहल्ली	43	5	0	01	09	day of May, 2007;					
	43	1	0	03	77	And whereas, the Competent Authority in					
	44	2	0	12	48	pursuance of sub-section (1) of section 6 of the said Act					
	26	2	0	05	25	submitted his report to the Central Government;					
	26	3	0	09	71	And whereas, the Central Government after					
	26	1	0	07	82	considering the said report is satisfied that the right of					
	27	2	0	04	63	user in the land specified in the Schedule appended to this					
	27	1	0	03	29	Notification should be acquired;					
	28	4	0	03	88	Now, therefore, in exercise of the powers conferred					
	28	3	0	02	00	by sub-section (1) of section 6 of the said Act, the Central					
	28	1	0	03	42	Government hereby declares that the right of user in the					
	29	2	0	03	59	land specified in the Schedule appended to this notification					
	29	1	0	03	21	is hereby acquired for laying the pipeline;					
	30	2	0	03	93	And further, in exercise of the powers conferred by					
	30	1	0	02	38	sub-section (4) of section 6 of the said Act, the Central					
						Government hereby directs that the right of user in the said					
						lands shall instead of vesting in the Central Government,					
						vest on the date of the publication of this declaration in the					
						Indian Oil Corporation Limited free from all encumbrances.					

SCHEDULE						1	2	3	4	5	6	
Taluk: Hoskote District: Bangalore Rural State: Karnataka												
Name of the Village	Survey no.	Sub-Division no.	Area									
			Hectare	Are	Sq. mtr.							
1	2	3	4	5	6							
Hobil: Jadigenahalli						Vagata Agrahara	24	-	0	02	95	
Tarabahalli	23	P1	}	0	74	15		23	-	0	02	84
	23	P2		-	-	-		18	2A	0	00	31
	23	P3		-	-	-		19	1	0	06	01
	23	P4		-	-	-		19	2	0	04	06
	23	P5		-	-	-		20	-	0	09	26
	20	2		0	06	97	Vagata	10	1B	0	09	72
	20	1		0	12	66		9	-	0	17	86
	36	-		0	03	85		7	-	0	19	97
	35	3		0	07	27		6	-	0	00	52
	26	3		0	14	21	Honachanahalli	32	6	0	02	76
	35	1		0	01	34		32	5	0	02	13
	31	2		0	06	79		32	2	0	02	37
	32	3		0	03	87		32	1	0	01	91
	31	1		0	00	29	Govindapura	66	2	0	03	00
	30	2		0	15	78		66	1	0	03	20
	30	1		0	00	26		67	-	0	06	16
Paramanahalli	120	-		0	05	04		68	4	0	06	34
	116	-		0	06	35		68	3	0	02	73
	115	-		0	11	69		68	2	0	03	75
	111	1		0	04	63		68	1	0	01	20
	110	2		0	02	65		69	-	0	20	88
	125	-		0	04	96		70	1	0	01	57
	126	-		0	01	28		70	2	0	01	65
	109	1		0	02	57		71	-	0	08	53
	128	-		0	13	83		72	-	0	00	28
	135	-		0	08	05		73	-	0	12	31
	139	-		0	22	07		74	2A	0	03	03
	144	-		0	06	14		74	2B	0	05	04
	145	1		0	08	94		75	1	0	03	45
	146	3		0	02	66		71	4	0	01	90
	146	1		0	03	94		71	3	0	04	29
	150	2		0	06	28		71	2	0	03	49
	149	2		0	00	15		71	1	0	02	60
	150	1		0	06	48		75	-	0	06	11
	151	4		0	05	46		69	4	0	01	04
	151	3		0	09	01		68	1	0	07	80
	184	-		0	08	24		68	2	0	04	58
	179	-		0	04	11		65	-	0	07	95
	Vagata Agrahara	32	-		0	04	94	Vadigehalli	64	-	0	05
31		-		0	03	06		63	6	0	04	66
30		-		0	02	88		78	-	0	01	40
29		-		0	02	25		79	-	0	07	22
25		-		0	03	98		81	-	0	55	56
							81	P1	-	-	-	
							81	P2	-	-	-	
							81	P3	-	-	-	
							85	-	0	02	44	

1	2	3	4	5	6	1	2	3	4	5	6
Vadigehalli	84	-	0	03	46	Hobli : Kasaba					
	82	-	0	06	23	Kolathuru	104	-	0	08	09
	86	1	0	07	55		106	2	0	03	73
	86	2	0	01	35		105	-	0	17	29
	89	-	0	11	67		83	1	0	19	49
Jadigenahalli	183	-	0	54	42		70	1	0	00	20
	185	-	0	70	13		71	2	0	11	74
Haraluru	52	-	0	07	37		71	1	0	08	93
	51	2	0	11	30		73	-	0	05	98
	51	1	0	03	80		74	2	0	02	18
	49	1D	0	06	30		74	1	0	01	69
	49	1C	0	00	99		7	-	0	10	89
	57	-	0	14	83		8	-	0	12	69
	47	-	0	00	10		10	1	0	14	17
	61	1	0	07	10		12	2	0	00	19
	61	2A	0	04	54		187	3	0	04	46
	61	2B	0	08	20		186	-	0	05	76
	62	1	0	04	09		184	1	0	07	23
	62	2A	0	01	52		183	-	0	04	43
	62	2B	0	01	42		182	6	0	00	29
	62	2C	0	01	43		182	5	0	04	57
	62	2D	0	01	94		181	3	0	09	83
	34	3	0	00	10		181	2	0	00	77
	34	2	0	02	39		180	4	0	05	55
	30	1	0	00	74		180	3	0	09	42
	30	2	0	05	30		180	2	0	01	29
	31	1	0	00	65		19	2	0	05	57
	31	2	0	04	12		19	1	0	02	33
	25	3A	0	01	82		20	6	0	02	65
	25	3B	0	01	87		20	5	0	01	20
	26	-	0	00	53		20	4	0	01	39
	25	2	0	02	63		20	3	0	01	56
	25	1	0	01	90		21	2	0	01	18
	23	4	0	01	63		21	1	0	09	01
	23	3	0	01	13		22	-	0	00	18
	23	2	0	01	87		24	-	0	06	05
	23	1	0	00	19		177	-	0	09	88
	16	2	0	11	19		174	1	0	09	49
	9	P1	0	01	35		173	1	0	00	66
	9	1P	-	-	-	Halasahalli	20	-	0	03	76
	9	2P	-	-	-	Hulluru Amanikere	142	6	0	04	31
	9	3P	-	-	-		142	5	0	02	99
Hobli : Kasaba							126	P1	0	10	47
Kolathuru	103	1	0	08	24		126	P2	-	-	-
	103	2	-	-	-		126	P3	-	-	-
	198	1	0	11	62		125	P1	0	03	85
	209	-	0	25	51		125	P2	-	-	-
	117	-	0	08	06		125	P3	-	-	-
							129	-	0	03	94

1	2	3	4	5	6	1	2	3	4	5	6
Hulluru Amanikere	118	2	0	02	25	Chikkahulluru	25	P1	0	23	04
	118	1	0	05	08		25	P2	-	-	-
	114	3	0	03	70		25	P4	-	-	-
	114	2	0	01	29		25	P5	-	-	-
	115	2	0	05	79	Kurubara Halli	104	-	0	39	06
	115	1	0	02	86		107	-	0	23	41
	113	3	0	05	34		108	-	0	13	61
	113	2	0	01	67		109	-	0	07	34
	113	1P1	0	04	72		110	-	0	12	73
Doddahulluru	32	8B	0	00	36		106	-	0	21	81
	32	8A	0	00	96	Kallahalli	158	-	0	08	71
	32	7A	0	01	27		157	2	0	03	19
	32	6	0	01	98		157	1	0	04	65
	32	5	0	00	91		156	-	0	07	60
	32	4	0	00	85		155	-	0	07	28
Doddahulluru	32	3	0	02	23		154	-	0	11	81
	41	3	0	00	62		149	-	0	12	39
	38	-	0	05	35		150	1	0	02	45
	39	-	0	00	34		150	2	0	09	17
	37	-	0	05	48		147	-	0	15	99
	36	-	0	00	28	Valeasandra	52	-	0	04	46
	33	4	0	09	47		51	2	0	08	98
	33	1	0	05	34		51	1	0	04	85
	46	3	0	01	42		50	1	0	03	84
	46	1	0	05	27		49	-	0	02	71
	47	1	0	00	15		47	-	0	09	16
	59	2	0	11	58		57	-	0	15	33
	59	1	0	05	22		58	1C	0	00	48
	58	1A	0	03	13		59	5	0	03	58
	75	5	0	05	56		59	4	0	04	36
	75	2	0	06	16		59	3	0	04	68
	75	1	0	00	10		59	2	0	03	44
	129	1	0	06	60		59	1	0	03	69
Yalachana	17	2	0	01	91		62	4	0	05	43
Yakanapura	16	-	0	09	32		60	-	0	00	83
	15	-	0	10	78		62	1	0	05	68
	14	-	0	05	55		62	3	0	00	48
	9	2	0	03	07		62	2	0	06	38
	9	1	0	06	77	Lakkondahalli	49	1	0	06	66
	8	3	0	04	15		48	2	0	02	16
	8	2	0	04	13		48	1	0	04	00
	8	1	0	04	24		45	5	0	02	26
	7	2	0	06	26		45	2	0	04	55
	7	1	0	03	75		45	1	0	04	32
	6	1	0	17	63		44	-	0	06	40
	2	-	0	00	21		40	4	0	01	04
	1	-	0	41	21		43	1	0	00	16
							41	3	0	11	43

1	2	3	4	5	6	1	2	3	4	5	6
Lakkondahalli	39	1	0	03	31	Hasigala	132	3C	0	00	53
	39	5	0	03	49		132	1C	0	00	70
	38	2	0	04	28		132	3D	0	00	37
	38	1	0	04	23		132	3B	0	00	10
	31	-	0	08	11		132	1D	0	01	56
	28	-	0	07	48		132	1B	0	02	42
	27	4	0	05	50		132	2	0	04	73
	27	3	0	01	57		146	2	0	03	05
	26	1	0	09	91		142	2	0	10	32
	25	-	0	07	51		142	1	0	06	50
Hobli : Sulibele							143	2	0	02	58
Kambalipura	166	-	0	04	09		139	P1	0	14	27
	167	-	0	05	79		139	P2	-	-	-
	168	-	0	00	75		139	P3	-	-	-
	169	-	0	02	52		139	P4	-	-	-
	170	-	0	03	61	Kammasandra	108	P	0	74	54
Hasigala	40	3	0	02	29		67	1	0	00	11
	40	1	0	01	43		68	4	0	00	19
	39	3	0	02	95		78	2	0	00	87
	39	2	0	08	26	Taluk : Devanahalli District: Bangalore Rural State : Karnataka					
	174	1	0	02	24	Hobli : Channayapatna					
	174	2	0	01	64	Gangavara-	44	2	0	00	29
	174	3	0	02	54	Chowdappanahalli	44	3	0	06	66
	32	1	0	05	15		46	-	0	07	61
	31	-	0	09	30		45	-	0	06	78
	24	2	0	03	34		42	-	0	04	28
	25	-	0	03	71		41	-	0	03	60
	26	3	0	01	57		31	-	0	06	78
	27	-	0	02	76		32	3	0	01	56
	28	5	0	01	70		32	4	0	04	92
	28	1	0	01	17		30	-	0	02	96
	4	7	0	02	06		32	1	0	05	31
	4	2	0	02	23		4	-	0	01	60
	3	3	0	04	88		5	2	0	04	12
	169	2	0	06	95		5	1	0	05	87
	169	1	0	05	90		6	2	0	01	36
	168	-	0	01	89		6	1	0	04	57
	120	-	0	02	92		7	-	0	08	12
	122	1	0	03	46		15	-	0	06	31
	123	-	0	03	79		16	-	0	08	34
	124	4	0	02	25		13	1	0	06	08
	112	-	0	03	64		17	1	0	05	67
	127	2	0	03	58		18	2	0	07	09
	127	4	0	00	99		18	1	0	06	56
	109	1	0	00	47		20	-	0	05	67
	128	-	0	08	03		12	3	0	07	69
	130	1	0	02	97	Somathanahalli	140	7	0	10	20
	130	2	0	06	27		141	11	0	01	51
	130	3	0	00	19		141	4	0	16	99

1	2	3	4	5	6	1	2	3	4	5	6
Somathanahalli	141	8	0	00	10	Unasuru	4	7	0	07	73
	141	3	0	08	15		4	2	0	01	94
	142	-	0	18	72		4	1	0	02	79
	137	-	0	12	40		113	-	0	00	78
	136	-	0	11	41		88	-	0	05	34
	148	-	0	47	76	Mylanahalli	26	1	0	24	89
	149	-	0	51	06		26	2	-	-	-
Jonnahalli	63	-	0	22	75		116	-	0	24	50
Kaggalahalli	2	-	0	13	85		18	-	0	08	22
Batramarenahalli	34	-	0	08	69		14	-	0	28	87
	33	-	0	14	79		19	-	0	20	60
	27	-	0	16	28		6	2	0	10	94
	25	-	0	00	15		6	1A	0	07	62
	24	-	0	02	79		6	1B	-	-	-
	23	-	0	00	99		5	-	0	05	08
	26	-	0	09	95		1	-	0	16	65
	5	1	0	09	57		2	3	0	07	15
	5	2	0	04	74		2	4	0	07	37
	6	3	0	07	28		110	3	0	05	33
	6	2A	0	02	69	Chikkanahalli	43	5	0	01	09
	6	2B	0	00	38		43	1	0	03	77
	10	1	0	13	87		44	2	0	12	48
	10	2	-	-	-		26	2	0	05	25
	10	3	-	-	-		26	3	0	09	71
	10	4	-	-	-		26	1	0	07	82
	10	5	-	-	-		27	2	0	04	63
Kavadadasanahalli	21	-	0	73	28		27	1	0	03	29
	18	-	0	16	74		28	4	0	03	88
	19	-	0	04	16		28	3	0	02	00
Taluk : Yalahanka District : Bangalore Urban							28	1	0	03	42
State : Karnataka							29	2	0	03	59
Hobli : Jala							29	1	0	03	21
Dhummanahalli	21	-	0	08	18		30	2	0	03	93
	20	-	0	19	88		30	1	0	02	38
	19	-	0	12	81		31	2	0	01	41
	39	-	0	00	10		31	1	0	06	61
	40	-	0	35	37	Beguru	90	2	0	08	09
Unasuru	8	1	0	15	28		95	2	0	04	71
	8	2P1	-	-	-		95	1	0	05	14
	8	2P2	-	-	-		94	-	0	08	24
	8	2P3	-	-	-		100	1	0	14	80
	109	-	0	05	28		101	2	0	04	76
	108	-	0	10	16		101	1	0	13	46
	107	-	0	06	95		84	1	0	16	17
	106	-	0	07	57		84	2	-	-	-
	105	-	0	00	50		85	-	0	11	53
	5	-	0	18	14						

[F.No.R-25011/3/2007-O.R-I]

S. K. CHITKARA, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 23 जुलाई, 2007

का.आ. 2313.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 211/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-7-2007 को प्राप्त हुआ था।

[सं. एल-12012/311/1998-आईआर(बी-1)]

अजय कुमार, डेस्क अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 23rd July, 2007

S.O. 2313.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 211/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 23-7-2007.

[No. L-12012/311/1998-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**

Wednesday, the 31st January, 2007

PRESENT**Shri K. Jayaraman, Presiding Officer****Industrial Dispute No. 211/2004**

(Principal Labour Court CGID No. 49/99)

(In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri S. Udayakumar : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India,
Z. O. Chennai.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative.
For the Management : M/s. K.S. Sundar,
Advocates.

AWARD

1. The Central Government Ministry of Labour, vide Order No. L 12012/311/98-IR (B-I) dated 02-02-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 49/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this-CGIT-cum labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D.No. 211/2004.

2. The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri S. Udayakumar, wait list No.448 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Elephant Gate branch. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Elephant Gate branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. The Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working

on temporary basis in Nungambakkam branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not required any more and he need not attend the office from 1-4-1997. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been Regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in lieu of provisions of

law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 448 in wait list of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B, and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was

wait listed at 448 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under section 18(1) of the Act and not under section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff

in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

- (i) "Whether the demand of the Petitioner in Wait List No. 448 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for

regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In

such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W. P. No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 compares of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex.M 1 namely wait list is not in conformity

with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released / published even after the Court order in WMP No. 11932/91 in W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex.M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M 1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex.M 10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M 4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for

being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under section 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or

implied contract of service or by compulsion of statute, standing orders etc. "It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the ID. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bonafide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised

a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel

for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical

manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K. V. VIJESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in

1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc / temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of

thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SEC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of and irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and

retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. Further, in CDJ 2006 SC 448 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported

period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this

stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent /Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not intitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:—

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:—

For the Petitioner	WW1 Sri S. Udayakumar WW2 Sri V. S. Ekambaram
For the Respondent	MW1 Sri C. Mariappan MW2 Sri C. Ramalingam

Documents Marked:—

Ex. No.	Date	Description
W1	01-08-88	Xerox copy of the of the paper publication in daily Thanthi based on Ex.M1.
W2	20-04-88	Xerox copy of the administrative guidelines Issued by Respondent/Bank for implementation of Ex. M1.

W3	24-04-91	Xerox copy of the circular of Respondent/Bank to all branches regarding absorption of daily wagers in Messenger vacancies
W4	01-05-91	Xerox copy of the advertisement in The Hindu on daily wages based on Ex.W4.
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending Period of qualifying service daily wagers
W6	15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts.
W7	25-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.
W8	Nil	Xerox copy of the instruction Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.
W9	17-11-84	Xerox copy of the service certificate issued by Elephant Gate Branch.
W10	21-11-96	Xerox copy of the service certificate issued by Purasawalkam Branch.
W11	21-11-96	Xerox copy of the service certificate issued by Nungambalkkam branch.
W12	30-01-97	Xerox copy of the service certificate issued by Nungambakkam Branch.
W13	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding appointment of temporary employees.
W14	Nil	Xerox copy of the Reference Book on Staff Matters Vol. III consolidated upto 31-12-1984
W15	06-03-97	Xerox copy of the cali letter from Madurai Zonal Office for interview of messenger post—V. Muralikannan.
W16	06-03-97	Xerox copy of the call letter from Madurai Zonal Office for interview of messenger post—K. Subburaj.
W17	06-03-97	Xerox copy of the call letter from Madurai Zonal Office For interview of messenger post—J. Velmurugan.
W18	17-03-97	Xerox copy of the service particulars—J. Velmurugan
W19	26-03-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi

W20	31-03-97	Xerox copy of the appointment order to Sri G. Pandi
W21	Feb.2005	Xerox copy of the Pay Slip of T. Sekar for the month of February 2005 wait list No. 395 of Madurai Circle.
W22	13-02-95	Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list.
W23	09-11-92	Xerox copy of the Head office Circular No. 28 regarding norms for sanction of messenger staff.
W24	09-07-92	Xerox copy of the Minutes of the Bipartite Meeting.
W25	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms creation of part time general Attendants.
W26	07-02-06	Xerox copy of the local Head Office circular about conversion of part time employees and redesignate them as general attendants.
W27	31-12-85	Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre.

For the Respondent/Management:—

Ex. No.	Date	Description
M1	17-11-87	Xerox copy of the settlement.
M2	16-07-88	Xerox copy of the settlement.
M3	27-10-88	Xerox copy of the settlement.
M4	09-01-91	Xerox copy of the settlement.
M5	30-07-96	Xerox copy of the settlement.
M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
M7	28-05-91	Xerox copy of the order in W.P. No. 7872/91.
M8	15-05-98	Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa.
M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M10	Nil	Xerox copy of the wait list of Chennai Module.
M11	25-10-99	Xerox copy of the order passed in CMP No.16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 23 जुलाई, 2007

का.आ. 2314.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के

बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 210/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-7-2007 को प्राप्त हुआ था।

[सं. एल-12012/310/1998-आईआर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 23rd July, 2007

S.O. 2314.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 210/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 23-7-2007.

[No.L-12012/310/1998-IR(B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**

Wednesday, the 31st January, 2007

PRESENT:

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 210/2004

(Principal Labour Court CGID No. 48/99)

(In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri K. Srinivasan : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India,
Z. O. Chennai.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative.

For the Management : M/s. K.S. Sundar,
Advocates.

AWARD

1. The Central Government Ministry of Labour, vide Order No. L-12012/310/98-IR (B-1) dated 02-02-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 48/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively.

After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D.No 210/2004.

2. The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri K. Srinivasan, wait list No. 500 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Royapuram branch from 22-09-1987. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Royapuram branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 22-09-1987 the Petitioner has been working as a temporary messenger and some time performing work in other branches also. While working on temporary basis in Saidapet Bazar branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not required any more and he need not attend the office from 1-4-1997. Hence, the Petitioner raised a dispute with regard

to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were

prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No.500 in wait list of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B, and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 500 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment

(Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by Employment Exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W. P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

- (i) "Whether the demand of the Petitioner in Wait List No. 500 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous

service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days; hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the provisions of Chapter V A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to persons who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W 2, W 3 and W 8 as well as Ex. M 8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M 1 and the averments of MW 1 and MW 2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W 8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this

amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W 2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further, the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 compares of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex.M 1 namely wait list is not in conformity with the instructions of Ex.M 2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released / published even after the Court order in WMP No. 11932/91 in W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful

candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex.M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M 1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that 'to employ workmen as 'badlies casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal.' Learned representative further contended that Ex. M 10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, *mala fide* and illegal

and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No.11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Section 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc." It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal.

In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the I. D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bonafide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189

ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 1 LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not

binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOPWORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication.

The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K. V. VIJESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with

which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc / temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other

relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 IISCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come—first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors. Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner.

In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. Further, in CDJ 2006 SC 5443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was

bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs S.C. PANDEY where in the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not intitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:

For the Petitioner	WW1 Sri K. Srinivasan
	WW2 Sri V. S. Ekambaram
For the Respondent	MW1 Sri C. Mariappan
	MW2 Sri C. Ramalingam

Documents Marked :—

Ex.No.	Date	Description
W1	01-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W2	20-04-88	Xerox copy of the administrative guidelines Issued by Respondent/Bank for implementation of Ex. M1
W3	24-04-91	Xerox copy of the circular of Respondent/Bank to all branches regarding absorption of daily wagers in Messenger vacancies
W4	01-05-91	Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4.

W5	20-08-91	Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wages	W24	13-02-95	Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list.
W6	15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts.	W25	09-11-92	Xerox copy of the Head Office Circular No. 28 regarding Norms for sanction of messenger staff.
W7	25-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.	W26	09-07-92	Xerox copy of the Minutes of the Bipartite Meeting.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.	W27	09-07-92	Xerox copy of the Settlement between Respondent/Bank and Ail India Staff Bank of India Staff Federation for implementation of norms creation of part time general Attendants.
W9	17-06-89	Xerox copy of the service certificate issued by Royapuram Branch.	W28	07-02-06	Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants.
W10	26-09-92	Xerox copy of the service certificate issued by Royapuram Branch.	W29	31-12-85	Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre.
W11	27-07-95	Xerox copy of the service certificate issued by Overseas branch.	For the Respondent/Management :—		
W12	09-04-97	Xerox copy of the service certificate issued by Nungambakkam Branch.	Ex. No.	Date	Description
W13	24-04-97	Xerox copy of the service certificate issued by Saidapet Branch.	M1	17-11-87	Xerox copy of the settlement.
W14	06-05-97	Xerox copy of the service certificate issued by Alandur Branch.	M2	16-07-88	Xerox copy of the settlement.
W15	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment in subordinate care & service conditions.	M3	27-10-88	Xerox copy of the settlement.
W16	Nil	Xerox copy of the Reference book on Staff matters Vol. III consolidated upto 31-12-95.	M4	09-01-91	Xerox copy of the settlement.
W17	06-03-97	Xerox copy of the call letter from Madurai Zonal Office For interview of messenger post—J. Muralikannan.	M5	30-07-96	Xerox copy of the settlement.
W18	06-03-97	Xerox copy the call letter from Madurai Zonal Office for interview of messenger post—K. Subburaj	M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
W19	06-03-97	Xerox copy of the call letter from Madurai zonal office For interview of messenger post—J. Velmurugan	M7	28-05-91	Xerox copy of the order in W.P. No. 7872/91.
W20	17-03-97	Xerox copy of the service particulars—J. Velmurugan	M8	15-05-98	Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa.
W21	26-03-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi	M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
W22	31-03-97	Xerox copy of the appointment order to Sri G. Pandi	M10	Nil	Xerox copy of the wait list of Chennai Module.
W23	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February 2005 wait list No. 395 of Madurai Circle.	M11	25-10-99	Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 23 जुलाई, 2007

का.आ. 2315.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 217/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-7-2007 को प्राप्त हुआ था।

[सं. एल-12012/349/1998-आईआर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 23rd July, 2007

S.O. 2315.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 217/2004) of the Central Government Industrial Tribunal-Cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 23-7-2007.

[No. L-12012/349/1998-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 217/2004

[Principal Labour Court CGID No. 55/99]

(In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri S. Panneerselvam : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India,
Z. O. Chennai.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative.

For the Management : M/s. K. S. Sunder
Advocates

AWARD

1. The Central Government Ministry of Labour, *vide* Order No. L-12012/349/98-IR (B-I) dated 03-02-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 55/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this-CGIT-cum Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D.No. 217/2004.

2. The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri P. Panneerselvam, wait list No. 555 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Kodambakkam branch from October, 1985. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Kodambakkam branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From October, 1985, the Petitioner has been working as a temporary messenger and some time performing work in other branches also. While working on temporary basis in Nungambakkam branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/

Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been Regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not *bona fide* and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3)

of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 555 in waitlist of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B, and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 555 he was not appointed. The said settlements were *bona fide* which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per

settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

- (i) "Whether the demand of the Petitioner in Wait List No. 555 for restoring the wait list of temporary messengers. In the Respondent/Bank and consequential appointment

thereupon as temporary messenger is justified?"

- (ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies. In subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they

have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW 1 and MW 2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M 1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M 1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10

was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.M 1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M 10 namely wait list is not in conformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released / published even after the Court order in WMP No. 11932/91 in W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex.M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list.

Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M 10 wait list has not been prepared in accordance with principle of seniority. In the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says

only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Section 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such

circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the ID. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bonafide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the Federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL, A.P. AND OTHERS wherein under section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that *"in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen."* Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that *"therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the*

ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that *"there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration."* Learned counsel for the Respondent further relied on the rulings reported in 1997 ILLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that *"settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also."* He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that *"settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the Conciliation officer, must be fair and reasonable."* Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is *"whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of*

Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?" The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "*mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again.*" It further held that "*the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits.*" Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "*the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties.*" He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "*it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner.*" He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "*the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court.*" Relying on all these decisions, the representative for the

Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VIJESH wherein the Supreme Court has held that "*the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy.*" In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits in which, the Supreme Court has held that "*in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory.*" He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "*by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as*

contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad hoc / temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied

on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors. Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY,

STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it is also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... it has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that "only

because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed

240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:—

For the Petitioner WW1 Sri S. Panneerselvam
WW2 Sri V. S. Ekambaram

For the Respondent MW1 Sri C. Mariappan
MW2 Sri C. Ramalingam

Documents Marked :—

Ex.No.	Date	Description
W1	1-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W2	20-04-88	Xerox copy of the administrative guidelines Issued by Respondent/Bank for implementation of Ex. M1
W3	24-04-91	Xerox copy of the Circular of Respondent/Bank to all branch regarding absorption of daily wagers in Messenger vacancies.
W4	01-05-91	Xerox copy of the advertisement in The Hindu on daily Wages based on Ex. W4
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers.
W6	15-03-97	Xerox copy of the circular letter of Zonal Officer, Chennai About filling up of vacancies of messengers posts

W7	25-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casual not to be engaged at office branches to do messengerial work.
W9	26-08-88	Xerox copy of the service certificate issued by Kodambakkam Branch.
W10	06-03-91	Xerox copy of the service certificate issued by Nungambakkam Branch.
W11	19-05-92	Xerox copy of the service certificate issued by Nungambakkam Branch.
W12	18-08-94	Xerox copy of the service certificate issued by Nungambakkam Branch.
W13	18-08-94	Xerox copy of the service certificate issued by Nungambakkam Branch.
W14	14-10-96	Xerox copy of the service certificate issued by Nungambakkam Branch
W15	08-03-97	Xerox copy of the certificate issued by Nungambakkam Branch
W16	22-05-98	Xerox copy of the service certificate issued by Industrial Finance Branch
W17	025-02-98	Xerox copy of the service certificate issued by Nungambakkam Branch
W18	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/bank regarding recruitment to subordinate care & service conditions.
W19	Nil	Xerox copy of the service Chapter XXX of Reference book on Staff matters regarding service conditions of part-time Employees & domestic servants.
W20	06-03-97	Xerox copy of the letter from Madurai zonal office For interview of messenger post—V. Muralikannan
W21	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj
W22	06-06-97	Xerox copy of the call letter from Madurai zonal office For interview of messenger post—J. Velmurugan
W23	17-03-97	Xerox copy of the service particulars—J. Velmurugan
W24	26-03-97	Xerox copy of the call letter advising selection of part time Menial—G. Pandi
W25	31-03-97	Xerox copy of the appointment order to Sri G. Pandi

W26	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Mudurai Circle
W27	13-02-95	Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list
W28	09-11-92	Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff
W29	09-07-92	Xerox copy of the minutes of the Bipartite meeting
W30	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants
W31	7-2-06	Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants
W32	31-12-85	Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre

For the Respondent/Management :—

Ex. No.	Date	Description
M1	17-11-87	Xerox copy of the settlement.
M2	16-07-88	Xerox copy of the settlement.
M3	27-10-88	Xerox copy of the settlement.
M4	09-01-91	Xerox copy of the settlement.
M5	30-07-96	Xerox copy of the settlement.
M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
M7	28-05-91	Xerox copy of the order in W.P. No. 7872/91.
M8	15-05-98	Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa.
M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M10	Nil	Xerox copy of the wait list of Trichy Module.
M11	25-10-99	Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 23 जुलाई, 2007

का.आ. 2316.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के

बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचायत (संदर्भ संख्या 216/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-7-2007 को प्राप्त हुआ था।

[सं. एल-12012/351/1998-आईआर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 23rd July, 2007.

S.O. 2316.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 216/2004) of the Central Government Industrial Tribunal-Cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 23-7-2007.

[No. L-12012/351/1998-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**

Wednesday, the 31st January, 2007

PRESENT

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 216/2004

[Principal Labour Court CGID No. 54/99]

(In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri M. Thangavelu : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India,
Z. O. Chennai.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative.

For the Management : M/s. K. S. Sunder Advocates

AWARD

1. The Central Government Ministry of Labour, vide Order No. L-12012/351/98-IR (B-I) dated 03-02-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 54/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively.

After the constitution of this-CGIT-cum Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D.No. 216/2004.

2. The Schedule mentioned in that order is as follows:

“Whether the demand of the workman Shri M. Thangavelu wait list No. 541 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Thiruvallur branch. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Thiruvallur branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. The Petitioner has been working as a temporary messenger and some-times performing work in other branches also. While working on temporary basis in Thiruvallur branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure,

the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been Regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and

when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 538 in waitlist of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B, and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 538 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/

Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my

consideration are :

- (i) "Whether the demand of the Petitioner in Wait List No. 541 for restoring the wait list of temporary messengers. In the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies. In subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and

enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW 1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per

instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondents are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released / published even after the Court order in WMP No. 11932/91 in W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in 'The Hindu' dated 1-8-88.

Furthermore, wait list under Ex. M10 does not carry particulars about the candidates' date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. If is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of

settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds. have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc." It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement

on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the ID. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the Federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the

Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 1 LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the Federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOPWORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VANSAG NATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and

reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VIJESH wherein the Supreme Court has held that *"the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy."* In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that *"in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory."* He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that *"by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of*

inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that *"candidates included in merit list has no indefeasible right to appointment even if a vacancy exists"* and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARASINGH AND OTHERS wherein the Supreme Court has held that *"now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door (c) he was not eligible and qualified for the post at the time of his appointment (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the*

impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of Lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. *"So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity."* Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS. Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that *"they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary."* He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that *"Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors."* Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that *"it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible."* Further, the Supreme Court while laying down the law, has clearly held that *"unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise."* Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that *"it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law."* Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO

INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :—

For the Petitioner	WW1 Sri M. Thangavelu
	WW2 Sri V. S. Ekambaram
For the Respondent	MW1 Sri C. Mariappan
	MW2 Sri C. Ramalingam

Documents Marked :—

Ex. No.	Date	Description
W1	01-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W2	20-4-88	Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1.
W3	24-4-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in messenger vacancies.
W4	01-05-91	Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4.
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers.

W6	15-03-97	Xerox copy of the circular letter of Zonal Office Chennai about filling up of vacancies of messenger posts.
W7	25-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.
W8	Nil	Xerox copy of the instruction in Reference Book on Staff about casuals not be engaged at office/branches to do messengersial work.
W9	Nil	Xerox copy of the service certificate issued by Thiruvallur branch.
W10	30-09-96	Xerox copy of the service certificate issued by Thiruvallur branch.
W11	Nil	Xerox copy of the service certificate issued by Thiruvallur branch.
W12	Nil	Xerox copy of the attendance register.
W13	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding appointment of temporary employees.
W14	Nil	Xerox copy of the Reference Book on Staff Matters Volume III consolidated upto 31-12-95.
W15	06-03-97	Xerox copy of the call letter from Madurai Zonal Office for interview of messenger post—V. Muralikannan.
W16	06-03-97	Xerox copy of the call letter from Madurai Zonal Office for interview of messenger post—K. Subburaj.
W17	06-03-97	Xerox copy of the call letter from Madurai Zonal Office for interview of messenger post—J. Velmurugan.
W18	17-03-97	Xerox copy of the service particulars —J. Velmurugan.
W19	26-03-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi.
W20	31-03-97	Xerox copy of the appointment order to Shri—G. Pandi.
W21	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of Februry, 2005 wait list No. 395 of Madurai Circle.
W22	13-2-95	Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list.
W23	09-11-92	Xerox copy of the Head Office Circular No. 28 regarding Norms for sanction of messenger staff.
W24	09-07-92	Xerox copy of the minutes of the Bipartite meeting.

W25	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Fedration for implementation of norms—creation of part time general attendants.
W26	07-02-06	Xerox copy of the Local Head Office circular about conversion of part time employees and redesignate them as general attendants.
W27	31-12-85	Xerox copy of the Local Head Office circular about appointment of temprrary employees. in subordinate cadre.

For the Respondent/Management :—

Ex. No.	Date	Description
M1	17-11-87	Xerox copy of the settlement.
M2	16-07-88	Xerox copy of the settlement.
M3	27-10-88	Xerox copy of the settlement.
M4	09-01-91	Xerox copy of the settlement.
M5	30-07-96	Xerox copy of the settlement.
M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
M7	28-05-91	Xerox copy of the order in W.P. No. 7872/91.
M8	15-05-98	Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa.
M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M10	Nil	Xerox copy of the wait list of Chennai Module.
M11	25-10-99	Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 23 जुलाई, 2007

का.आ. 2317.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 215/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-7-2007 को प्राप्त हुआ था।

[सं. एल-12012/350/1998-आईआर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 23rd July, 2007

S.O. 2317.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 215/2004) of the Central Government Industrial Tribunal-Cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 23-7-2007.

[No. L-12012/350/1998-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**

Wednesday, the 31st January, 2007

PRESENT**Shri K. Jayaraman, Presiding Officer****Industrial Dispute No. 215/2004**

[Principal Labour Court CGID No. 53/99]

(In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri V. Rajagopal : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India,
Z. O. Chennai.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative.

For the Management : M/s. K. S. Sunder
Advocates

AWARD

1. The Central Government Ministry of Labour, *vide* Order No. L-12012/350/98-IR (B-I) dated 3-2-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 53/99 and issued notices to both parties. Both sides entered appearance and filed their Claim Statement and Counter Statement respectively. After the constitution of this-CGIT-cum Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I. D. No. 215/2004.

2. The Schedule mentioned in that order is as follows:—

“Whether the demand of the workman Shri V. Rajagopal, wait list No. 408 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State

Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Ambattur Industrial Estate branch from 1-6-1981. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Ambattur Industrial Estate branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 01-06-1981, the Petitioner has been working as a temporary messenger and some time performing work in other branches also. While working on temporary basis in Ambattur Industrial Estate branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action

in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been Regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the questions of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not *bonafide* and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 408 in waitlist of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those

temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B, and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category; (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category; (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 408 he was not appointed. The said settlements were *bona fide* which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical

examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

- (i) "Whether the demand of the Petitioner in Wait List No. 408 for restoring the wait list of temporary messengers. In the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies. In subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the

connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category

of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P. No. 7872 of 1991, which is

marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India. Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not inconformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released / published even after the Court order in WMP No. 11932/91 in W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal

clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H. D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that *"to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal."* Learned representative further contended that Ex.M 10 wait list has not been prepared in accordance with principle of seniority In the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not 'produced any document show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to

voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression *"actually worked under the employer"* cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc." It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of

Section 18(1) and 18(3) of the ID. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bonafide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 ILLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Sections 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that *"in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen."* Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that *"therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement."* It further held that *"there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration."* Learned counsel for the Respondent further relied on the rulings reported in 1997 ILLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that *"settlements are divided*

into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that *"settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bonafide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable."* Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the

rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOPWORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that *"mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again."* It further held that *"the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits."* Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAG NATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that *"the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties."* He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that *"it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner."* He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that *"the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court."* Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this

Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VIJESH wherein the Supreme Court has held that *"the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy."* In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that *"in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory."* He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that *"by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively."* He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that *"candidates included in merit list has no indefeasible right to appointment even if a vacancy exists"* and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in

preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc / temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of Lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if

the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees

who by the very nature of their appointment, do not acquire any right." Further, it has also held that *"it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible."* Further, the Supreme court while laying down the law, has clearly held that *"unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules."* Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that *"regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise."* Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that *"it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law."* Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that *"only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service."* The Supreme Court also held that *"the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."*

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent /Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as

alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:

For the Petitioner	WW1 Sri V. Rajagopal WW2 Sri V. S. Ekambaram
For the Respondent	MW1 Sri C. Mariappan MW2 Sri C. Ramalingam

Documents Marked :—

Ex. No.	Date	Description
W1	01-08-88	Xerox copy of the paper publication in daily <i>Thanthi</i> based on Ex. M1.
W2	20-04-88	Xerox copy of the administrative guidelines Issued by Respondent/Bank for implementation of Ex. M1.
W3	24-04-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.
W4	01-05-91	Xerox copy of the advertisement in <i>The Hindu</i> on daily Wages based on Ex. W4
W5	20-08-91	Xerox copy of the advertisement in <i>The Hindu</i> extending Period of qualifying service to daily wagers.
W6	15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai About filling up of vacancies of messengers posts.
W7	25-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.

W9	26-08-96	Xerox copy of the service certificate issued by Ambattur Industrial Estate Branch.
W10	26-08-96	Xerox copy the of the service certificate issued by Ambattur Industrial Estate Branch.
W11	01-06-81	Xerox copy of the order of appointment by Ambattur Industrial Estate Branch.
W12	01-07-81	Xerox copy of the order of appointment issued by Ambattur Industrial Estate Branch.
W13	01-08-81	Xerox copy of the order of appointment issued by Ambattur Industrial Estate Branch.
W14	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate care & service condition.
W15	Nil	Xerox copy of the Reference book on Staff matters Vol. III consolidated upto 31-12-95.
W16	06-03-97	Xerox copy of the call letter from Madurai zonal office For interview of messenger post—V. Muralikannan.
W17	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj.
W18	06-03-97	Xerox copy of the call letter from Madurai zonal office For interview of messenger post—J. Velmurugan.
W19	17-03-97	Xerox copy of the service particulars—J. Velmurugan.
W20	26-03-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi.
W21	31-03-97	Xerox copy of the Appointment order to Shri G. Pandi.
W22	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Mudurai Circle.
W23	13-02-95	Xerox copy of the Madurai Module Circle letter about Engaging temporary employees from the panel of wait list.
W24	09-11-92	Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff.
W25	09-07-92	Xerox copy of the minutes of the Bipartite meeting.
W26	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants.

- W27 07-02-06 Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants.
- W28 31-12-85 Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre.

For the Respondent/Management:—

Ex. No.	Date	Description
M1	17-11-87	Xerox copy of the settlement.
M2	16-07-88	Xerox copy of the settlement.
M3	27-10-88	Xerox copy of the settlement.
M4	09-01-91	Xerox copy of the settlement.
M5	30-07-96	Xerox copy of the settlement.
M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
M7	28-05-91	Xerox copy of the order in W.P. No. 7872/91.
M8	15-05-98	Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa.
M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M10	Nil	Xerox copy of the wait list of Chennai Module.
M11	25-10-99	Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 23 जुलाई, 2007

का.आ. 2318.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 213/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-7-2007 को प्राप्त हुआ था।

[सं. एल-12012/313/1998-आईआर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 23rd July, 2007

S.O. 2318.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 213/2004) of the Central Government Industrial Tribunal-Cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 23-7-2007.

[No. L-12012/313/1998-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**

Wednesday, the 31st January, 2007

PRESENT

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 213/2004

[Principal Labour Court CGID No. 51/99]

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri A. Savarinathan : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India,
Z. O. Chennai.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative.

For the Management : M/s. K. S. Sunder Advocates

AWARD

1. The Central Government, Ministry of Labour, vide Order No. L-12012/313/98-IR (B-I) dated 02-02-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 51/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT cum Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I. D. No. 213/2004.

2. The Schedule mentioned in that order is as follows:—

“Whether the demand of the workman Shri A. Savarinathan, wait list No. 630 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Thiruvannamiyur branch from 17-02-1981. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Tiruvannamiyur branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 17-02-1981, the Petitioner has been working as a temporary messenger and some time performing work in other branches also. While working on temporary basis in Perambur branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview

do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's actions in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I. D. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not *bona fide* and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-07-88, 07-10-88, 9-1-1991 and 30-7-96. The said settlements became subject-matter of conciliation proceedings and minutes were drawn under Section 18(3) of I. D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 627 in waitlist of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a

temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category; (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category; (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 627 he was not appointed. The said settlements were *bona fide* which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has

no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

- (i) "Whether the demand of the Petitioner in Wait List No. 630 for restoring the wait list of temporary messengers. In the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is entitled?"

Point No. 1 :

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners

in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter VA of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner

contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not

produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M 10 namely wait list is not inconformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No. 11932/91 in W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex.M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M 1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these

petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex.M 10 wait list has not been prepared in accordance with principle of seniority. In the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in

the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Section 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner

in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the ID. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bonafide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 ILLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of

such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether

the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him.

Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K. V. VUEESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKAR SAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to

appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc / temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation

or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come- first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors. Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due

process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of

the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent /Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme

Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :—

For the Petitioner WW1 Sri S. Savarinathan
 WW2 Sri V. S. Ekambaram

For the Respondent MW1 Sri C. Mariappan
 MW2 Sri C. Ramalingam

Documents Marked :—

Ex.No.	Date	Description
W1	01-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W2	20-04-88	Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1.
W3	24-04-91	Xerox copy of the circular of respondent/ Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.
W4	01-05-91	Xerox copy of the advertisement in The Hindu on daily Wages based on Ex. W4.
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers.
W6	15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts.
W7	25-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of Massenger vacancies and filling them before 31-3-97.

W8	Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.
W9	11-08-88	Xerox copy of the service certificate issued by Tiruvanmiyur Branch.
W10	12-03-92	Xerox copy of the service certificate issued by Arubakkam Branch.
W11	30-03-94	Xerox copy of the service certificate issued by Arumbakkam Branch.
W12	05-01-95	Xerox copy of the service certificate issued by Perambur Branch.
W13	30-05-95	Xerox copy of the service certificate issued by Perambur Branch.
W14	14-05-98	Xerox copy of the service certificate issued by Perambur Branch.
W15	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre & service conditions.
W16	Nil	Xerox copy of the call Reference Book on Staff matters Vol. III consolidated upto 31-12-95.
W17	06-03-97	Xerox copy of the letter from Madurai zonal office for interview of messenger post—V. Muralikannan
W18	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subhuraraj.
W19	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan.
W20	17-03-97	Xerox copy of the service particulars—J. Velmurugan.
W21	26-03-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi.
W22	31-3-97	Xerox copy of the appointment order to Sri G. Pandi.
W23	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Mudurai Circle.
W24	13-02-95	Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list.
W25	09-11-92	Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff.
W26	09-07-92	Xerox copy of the minutes of the Bipartite meeting.

W27	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants.
W28	7&0706	Xerox copy of the local Head Office circular about conversion of part time employees and redesignation them as general attendants.
29	31-12-85	Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre.

For the Respondent/Management :—

Ex. No.	Date	Description
M1	17-11-87	Xerox copy of the settlement.
M2	16-07-88	Xerox copy of the settlement.
M3	27-10-88	Xerox copy of the settlement.
M4	09-01-91	Xerox copy of the settlement.
M5	30-07-96	Xerox copy of the settlement.
M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
M7	28-05-91	Xerox copy of the order in W.P. No. 7872/91.
M8	15-05-98	Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa.
M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M10	Nil	Xerox copy of the wait list of channel Module.
M11	25-10-99	Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 23 जुलाई, 2007

का.आ. 2319.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 214/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-7-2007 को प्राप्त हुआ था।

[सं. एल-12012/352/1998-आईआर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 23rd July, 2007

S.O. 2319.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 214/2004) of the Central Government Industrial Tribunal-Cum-Labour Court, Chennai as shown in the Annexure in the

Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 23-7-2007.

[No.L-12012/352/1998-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. JAYARAMAN, Presiding Officer

Industrial Dispute No. 214/2004

[Principal Labour Court CGID No. 52/99]

(In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri M. Manivannan : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India,
Z. O. Chennai.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative.

For the Management : M/s. K. S. Sundar,
Advocates

AWARD

1. The Central Government, Ministry of Labour, vide Order No. L-12012/352/98-IR (B-I) dated 03-02-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 52/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 214/2004.

2. The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri M. Manivannan, wait list No. 465 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary

messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at IIT branch from 15-10-1982. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the IIT branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 15-10-1982, the Petitioner has been working as a temporary messenger and some time performing work in other branches also. While working on temporary basis in IIT branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank,

it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not *bona fide* and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 463 in wait list of Zonal Office, Chennai. So far 357 wait listed temporary

candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement employees were categorised as A, B, and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 463 he was not appointed. The said settlements were *bona fide* which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and

hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are—

- (i) "Whether the demand of the Petitioner in Wait List No. 465 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is entitled?"

Point No. 1 :

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners

in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees' Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542(civil)/1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M 1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter VA of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner

contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not

produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India. Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M 10 namely wait list is not in conformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released / published even after the Court order in WMP No. 11932/91 in W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex.M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M 1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is

further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex.M 10 wait list has not been prepared in accordance with principle of seniority. In the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed

of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Section 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view

of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the ID. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bonafide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even

corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "*settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable.*" Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is "whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?" The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not

valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VANSAG NATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "*it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner.*" He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged

by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VIJESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates

included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARASINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc / temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 IISCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to

be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on

the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this Court probably having regard

to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent /Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy

decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :—

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:

For the Petitioner WW1 Sri M. Manivannan
 WW2 Sri V. S. Ekambaram
For the Respondent MW1 Sri C. Mariappan
 MW2 Sri C. Ramalingam

Documents Marked :—

Ex. No. Date Description

W1 01-08-88 Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W2 20-04-88 Xerox copy of the administrative guidelines Issued by Respondent/Bank for implementation of Ex. M1
W3 24-04-91 Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.
W4 01-05-91 Xerox copy of the advertisement in The Hindu on daily Wages based on Ex. W4
W5 20-08-91 Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers
W6 15-03-97 Xerox copy of the circular letter of Zonal Officer, Chennai About filling up of vacancies of messengers posts
W7 25-03-97 Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies And filling them before 31-3-97.
W8 Nil Xerox copy of the instruction in Reference book on staff about casual not to be engaged at office/branches to do messengerial work.

W9 24-03-84 Xerox copy of the service certificate issued by IIT branch
W10 26-05-88 Xerox copy of the service certificate issued by Kodambakkam branch.
W11 23-09-96 Xerox copy of the service certificate issued by IIT branch.
W12 Nil Xerox copy of the administrative guidelines in reference book of staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre & service conditions.
W13 Nil Xerox copy of the Reference book on Staff matters Vol. III consolidated upto 31-12-95
W14 06-03-97 Xerox copy of the letter from Madurai Zonal office For interview of messenger post—V. Muralikannan
W15 06-03-97 Xerox copy of the call letter from Madurai Zonal Office For interview of messenger post—K. Subburaj
W16 06-03-97 Xerox copy of the call letter from Madurai Zonal Office For interview of messenger post—J. Velmurugan
W17 17-03-97 Xerox copy of the service particulars—J. Velmurugan
W18 26-03-97 Xerox copy of the letter advising selection of part time Menial—G. Pandi
W19 31-03-97 Xerox copy of the appointment order to Sri G. Pandi
W20 Feb. 2005 Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai circle
W21 13-02-95 Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list
W22 09-11-92 Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff
W23 09-07-92 Xerox copy of the minutes of the Bipartite meeting
W24 09-07-92 Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants
W25 07-02-06 Xerox copy of the Local Head Office circular about Conversion of part time employees and redesignate them as general attendants
W26 31-12-85 Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre.

For the Respondent/Management :—

Ex. No.	Date	Description
M1	17-11-87	Xerox copy of the settlement.
M2	16-07-88	Xerox copy of the settlement.
M3	27-10-88	Xerox copy of the settlement.
M4	09-01-91	Xerox copy of the settlement.
M5	30-07-96	Xerox copy of the settlement.
M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
M7	28-05-91	Xerox copy of the order in W.P. No. 7872/91.
M8	15-05-98	Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa.
M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M10	Nil	Xerox copy of the wait list of Chennai Module.
M11	25-10-99	Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 24 जुलाई, 2007

का.आ. 2320.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधन के संबंध में निरदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 265/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-7-2007 को प्राप्त हुआ था।

[स. एल-12012/463/1998-आईआर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 24th July, 2007

S.O. 2320.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 265/2004) of the Central Government Industrial Tribunal-Cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 24-7-2007.

[No. L-12012/463/1998-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**

Wednesday, the 31st January, 2007

PRESENT

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 265/2004

[Principal Labour Court CGID No. 209/99]

(In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri V. Chellappan : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India,
Z. O. Chennai.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative.

For the Management : M/s. K. Veeramani
Advocates

AWARD

The Central Government Ministry of Labour, vide Order No. L-12012/463/98-IR (B-I) dated 11-03-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 209/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this-CGIT-cum Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 265/2004.

2. The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri V. Chellappan, wait list No. 527 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Madurantakam branch from 20-04-1982. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject

matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Maduranthagam branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 20-04-1982, the Petitioner has been working as a temporary messenger and some time performing work in other branches also. While working on temporary basis in Maduranthagam branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award. Even though the settlement speaks about three

categories only a single wait list has been prepared and the Respondent/Bank has been Regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not *bona fide* and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 524 in waitlist of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were

categorised as A, B, and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 524 he was not appointed. The said settlements were *bona fide* which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set

out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

- (i) "Whether the demand of the Petitioner in Wait List No. 527 for restoring the wait list of temporary messengers. In the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this

case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of

retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no

pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 compares of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M 10 namely wait list is not in conformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released / published even after the Court order in WMP No. 11932/91 in W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex.M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M 1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy.

Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that *"to employ workmen as 'badliis casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal."* Learned representative further contended that Ex.M 10 wait list has not been prepared in accordance with principle of seniority In the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not 'produced any document show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in "accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses,

the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Section 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. " It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view

of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the ID. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bonafide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that

"there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 1 LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that *"settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also."* He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that *"settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable."* Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated

in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOPWORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that *"mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again."* It further held that *"the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits."* Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAG NATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that *"the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties."* He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that *"it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner."* He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that *"the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court."* Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been

retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VIJESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus,

misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable." Thus, the Supreme Court set aside

the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 **ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS** wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 **HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS.** wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 **SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI**, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 **NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH**, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 **MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR**, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 **MADHYA PRADESH STATE AGRO**

INDUSTRIES DEVELOPMENT CORPORATION Vs D.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :—

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:

For the Petitioner : WW1 Sri V. Chellappan
WW2 Sri V. S. Ekambaram

For the Respondent : MW1 Sri C. Mariappan
MW2 Sri C. Ramalingam

Documents Marked :—

Ex. No.	Date	Description
W1	01-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W2	20-04-88	Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1.
W3	24-04-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.
W4	01-05-91	Xerox copy of the advertisement in The Hindu on daily Wages based on Ex. W4.
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers.

W6	15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai About filling up of vacancies of messengers posts.	W24	17-03-97	Xerox copy of the service particulars—J. Velmurugan.
W7	25-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.	W25	26-03-97	Xerox copy of the letter from advising selection of part time Menial—G.Pandi.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.	W26	31-03-97	Xerox copy of the appointment order to Sri G.Pandi.
W9	17-07-82	Xerox copy of the service certificate issued by Madurantakam Branch.	W27	Feb.2005	Xerox copy of the payslip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle
W10	19-09-86	Xerox copy of the service certificate given by Karunguzhi Branch of Respondent/Bank.	W28	13-02-95	Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list.
W11	24-09-91	Xerox copy of the service certificate issued by Karunguzhi Branch.	W29	09-11-92	Xerox copy of the Head Office circular No. 28 regarding norms for sanction of messenger staff.
W12	06-02-93	Xerox copy of the service certificate issued by Karunguzhi Branch.	W30	09-07-92	Xerox copy of the minutes of the Bipartite meeting
W13	09-05-95	Xerox copy of the service certificate issued by Karunguzhi Branch.	W31	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants.
W14	07-02-96	Xerox copy of the service certificate issued by Karunguzhi Branch.	W32	07-02-06	Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants.
W15	18-10-96	Xerox copy of the service certificate issued by West Mambalam Branch.	W33	31-12-85	Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre
W16	Nil	Xerox copy of the service certificate issued by Kalpakkam Branch.	For the Respondent/Management :—		
W17	28-10-97	Xerox copy of the service certificate issued by Chengalpet Branch.	Ex. No.	Date	Description
W18	29-10-97	Xerox copy of the service certificate issued by Thirukalukundram.	M1	17-11-87	Xerox copy of the settlement.
W19	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre & service conditions.	M2	16-07-88	Xerox copy of the settlement.
W20	Nil	Xerox copy of the Reference book on staff matters Vol. III consolidated upto 31-12-95.	M3	27-10-88	Xerox copy of the settlement.
W21	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post-V. Muralikannan	M4	09-01-91	Xerox copy of the settlement.
W22	06-03-97	Xerox copy of the call letter Madurai zonal office for interview of messenger post—K. Subburaj.	M5	30-07-96	Xerox copy of the settlement.
W23	06-03-97	Xerox copy of the call letter Madurai zonal office for interview of messenger post—J. Velmurugan.	M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
			M7	28-05-91	Xerox copy of the order in W.P. No. 7872/91.
			M8	15-05-98	Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa.
			M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
			M10	Nil	Xerox copy of the wait list of Chennai Module.
			M11	25-10-99	Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 24 जुलाई, 2007

का.आ. 2321.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 31/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-7-2007 को प्राप्त हुआ था।

[सं. एल-12012/577/1998-आईआर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 24th July, 2007

S.O. 2321.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 31/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 24-7-2007.

[No. L-12012/577/1998-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. JAYARAMAN, Presiding Officer
Industrial Dispute No. 31/2004

[Principal Labour Court CGID No. 289/99]

[In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

BETWEEN

Sri R. Suresh Kumar : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India,
Z. O. Coimbatore.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative.

For the Management : M/s. K. Veeramani, Advocates

AWARD

1. The Central Government Ministry of Labour, vide Order No. L-12012/577/98-IR (B-I) dated 22-04-1998 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No.289/99 and issued notices to both parties. Both sides entered appearance and filed their Claim Statement and Counter Statement respectively. After the constitution of this-CGIT-cum Labour Court, the

said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No.31/2004.

2. The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri R. Suresh Kumar, wait list No. 641 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Indunagar branch from 2-7-1987. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Indunagar branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. The Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working on temporary basis in Indunagar branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh

representation to Government to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the Conciliation Officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Government for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not *bona fide* and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered

for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 641 in wait list of Zonal Office, coimbatore. So far 211 wait listed temporary candidates, out of 705 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B, and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 705 wait listed candidates, 211 temporary employees were appointed and since the Petitioner was wait listed at 641 he was not appointed. The said settlements were *bona fide* which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for

1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

- (i) "Whether the demand of the Petitioner in Wait List No. 641 for restoring the wait list of temporary messengers. In the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is entitled?"

Point No. I:

8. In this case, on behalf of the Petitioner it is

contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies. In subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that

Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first 'go' or first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in

its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 compares of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M 10 namely wait list is not inconformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released / published even after' the Court order in WMP No. 11932/91 in W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex.M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M 1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though

the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that *"to employ workmen as 'badlies casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal."* Learned representative further contended that Ex. M 10, wait list has not been prepared in accordance with principle of seniority. In the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement; but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in "accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(5) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes

post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Section 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 11 LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that *"the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.*

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the ID. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bonafide and are made with ulterior motive. Further, they have concealed

the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 ILLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 ILLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has

extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor

workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAG NATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K. V. VIJESH wherein the Supreme Court has

held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a

notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuance of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service

cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors. Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that *merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right.*" Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, The Supreme court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service

or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the

settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent /Bank.

18. Further, the representative for the Petitioner contended that in a similar case, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :

For the Petitioner : WW1 Sri Suresh Kumar
WW2 Sri V. S. Ekambaram

For the Respondent : MW1 Sri C. Mariappan
MW2 Sri S. Srinivasan

Documents Marked :—

Ex.No.	Date	Description
W1	01-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.

W2	20-04-88	Xerox copy of the administrative guidelines Issued by Respondent/Bank for implementation of Ex. M1	W19	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan.
W3	24-04-91	Xerox copy of the Circular of Respondent/Bank to all Branches regarding absorption of daily wagers in messenger vacancies.	W20	17-03-97	Xerox copy of the service particulars—J. Velmurugan.
W4	01-05-91	Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4	W21	26-03-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi.
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers.	W22	31-03-97	Xerox copy of the appointment order to Sri G. Pandi.
W6	15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai About filling up of vacancies of messenger posts	W23	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle.
W7	25-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.	W24	13-02-95	Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.	W25	09-11-92	Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff.
W9	31-08-87	Xerox copy of the temporary appointment order issued by Indunagar Branch.	W26	09-07-92	Xerox copy of the minutes of the Bipartite meeting.
W10	02-09-87	Xerox copy of the temporary appointment order issued by Indunagar Branch.	W27	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants.
W11	18-09-87	Xerox copy of the temporary appointment order issued by Indunagar Branch.	W28	07-02-06	Xerox copy of the local Head Office circular about conversion of part time employees and redesignate them as general attendants.
W12	05-10-87	Xerox copy of the temporary appointment order issued by Indunagar Branch.	W29	31-12-85	Xerox copy of the Local Head Office circular about appointment of temporary employees in subordinate cadre.
W13	31-10-87/ 01-11-87	Xerox copy of the temporary appointment order issued by Indunagar Branch.	For the Respondent/Management :—		
W14	13-10-88	Xerox copy of the temporary appointment order issued by Indunagar Branch.	Ex. No.	Date	Description
W15	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate care & service conditions.	M1	17-11-87	Xerox copy of the settlement.
W16	Nil	Xerox copy of the Reference book on staff matters Vol. III consolidated upto 31-12-95.	M2	16-07-88	Xerox copy of the settlement.
W17	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan.	M3	27-10-88	Xerox copy of the settlement.
W18	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj.	M4	09-01-91	Xerox copy of the settlement.
			M5	30-07-96	Xerox copy of the settlement.
			M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
			M7	28-05-91	Xerox copy of the order in W.P. No. 7872/91.
			M8	15-05-98	Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa.
			M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
			M10	Nil	Xerox copy of the wait list of Coimbatore Module.
			M11	25-10-99	Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 24 जुलाई, 2007

का.आ. 2322.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 32/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-7-2007 को प्राप्त हुआ था।

[सं. एल-12012/604/1998-आईआर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 24th July, 2007

S.O. 2322.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 32/2004) of the Central Government Industrial Tribunal-Cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 24-7-2007.

[No. L-12012/604/1998-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 32/2004

[Principal Labour Court CGID No. 290/99]

(In the matter of the dispute for adjudication under clause(d) of sub-section, (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri R. Siddaiyan : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India,
Z. O. Coimbatore.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative.

For the Management : M/s. K. Veeramani,
Advocates

AWARD

1. The Central Government Ministry of Labour, vide Order No. L-12012/604/98-IR (B-I) dated 23-04-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken

the dispute on its file as CGID No. 290/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this-CGIT-cum Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 32/2004.

2. The Schedule mentioned in that order is as follows:—

“Whether the demand of the workman Shri R. Siddaiyan, wait list No. 342 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Salem Main branch from 7-2-1986. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Salem Main branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 7-2-86, the Petitioner has been working as a temporary messenger and some time performing work in other branches also. While working on temporary basis in Salem Main branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not required any more and he need not attend the office from

1-4--97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Government to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been Regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not *bona fide* and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and

when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 342 in wait list of Zonal Office, Coimbatore. So far 211 wait listed temporary candidates, out of 705 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B, and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category, (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category, (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 705 wait listed candidates, 211 temporary employees were appointed and since the Petitioner was wait listed at 342 he was not appointed. The said settlements were *bona fide* which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of

Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

- (i) "Whether the demand of the Petitioner in Wait List No. 342 for restoring the wait list of temporary messengers. In the Respondent/Bank and consequential appointment

thereupon as temporary messenger is justified?"

- (ii) To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies. In subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V A of the I.D. Act and it is preposterous to contend that the

Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.M1, M3 and M4 respectively. But, when MW1 has spoken about the

settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P. No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India. Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 compares of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M 10 namely wait list is not in conformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after' the Court order in WMP No. 11932/91 in W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex.M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M 1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though

the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that *"to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal."* Learned representative further contended that Ex.M 10 wait list has not been prepared in accordance with principle of seniority In the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/

Management has examined two witnesses, the deposition of management witnesses during the cross- examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Section 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression *"actually worked under the employer"* cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and

their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the ID. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bonafide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 ILLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "*in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen.*" Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "*therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement.*" It further held that "*there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration.*" Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS

wherein the Supreme Court has held that "*settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under section 18(1) of the I.D. Act and; (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also.*" He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "*settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable.*" Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION

Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that *"mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again."* It further held that *"the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits."* Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 **VAN SAG NATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS.** wherein the Madhya Pradesh High Court has held that *"the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties."* He also relied on the rulings reported in 1998 LAB IC 1507 **A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS**, wherein it has been held that *"it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner."* He also argued that in *Express Newspapers P. Ltd.* case reported in AIR 1993 SC 569 the Supreme Court has held that *"the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court."* Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the

settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 **UNION OF INDIA AND OTHERS Vs. K. V. VIJESH** wherein the Supreme Court has held that *"the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Government service in an existing or a future vacancy."* In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that *"in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory."* He further relied on the rulings reported in 1997 6 SCC 584 **SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS** wherein the Supreme Court has held that *"by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively."* He further relied on the rulings reported in 1991 3 SCC 47 **SHANKARSAN DASH Vs. UNION OF INDIA** wherein the Supreme Court has held that *"candidates included in merit list has no indefeasible right to appointment even if a vacancy exists"* and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 **STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS** wherein the Supreme Court has held that *"now coming to the direction that all those ad-hoc*

temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc / temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to

exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode

of public appointment which is not permissible." Further, The Supreme court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either

the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent /Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :—

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:—

For the Petitioner	WW1 Sri R. Siddian WW2 Sri V. S. Ekambaram
For the Respondent	MW1 Sri C. Mariappan MW2 S. Srinivasan

Documents Marked :—

Ex. No.	Date	Description
W1	01-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W2	20-04-88	Xerox copy of the administrative guidelines Issued by Respondent/Bank for implementation of Ex. M1.
W3	24-04-91	Xerox copy of the Circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.
W4	01-05-91	Xerox copy of the advertisement in The Hindu on daily Wages based on Ex. W4.
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers
W6	15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai About filling up of vacancies of messengers posts.
W7	25-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.
W9	04-05-87	Xerox copy of the service certificate issued by Salem Branch.
W10	20-08-92	Xerox copy of the temporary appointment order issued by Salem Branch.
W11	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate care & service conditions.
W12	Nil	Xerox copy of the Reference book on Staff matters Vol. III consolidated upto 31-12-95.
W13	06-03-97	Xerox copy of the call letter from Madurai zonal office For interview of messenger post—V. Muralikannan.
W14	06-03-97	Xerox copy of the call letter from Madurai zonal office For interview of messenger post—K. Subburaj.
W15	06-03-97	Xerox copy of the call letter from Madurai zonal office For interview of messenger post—J. Velmurugan.

W16	17-03-97	Xerox copy of the service particulars—J. Velmurugan.
W17	26-03-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi.
W18	31-03-97	Xerox copy of the appointment order to—Sri G. Pandi.
W19	Feb.2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle.
W20	13-2-95	Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list.
W21	09-11-92	Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff.
W22	09-07-92	Xerox copy of the minutes of the Bipartite meeting.
W23	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants.
W24	07-02-06	Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants.
W25	31-12-85	Xerox copy of the Local Head Office circular about Appointment of temporary employees in subordinate cadre.

For the Respondent/Management :—

Ex. No.	Date	Description
M1	17-11-87	Xerox copy of the settlement.
M2	16-07-88	Xerox copy of the settlement.
M3	27-10-88	Xerox copy of the settlement.
M4	09-01-91	Xerox copy of the settlement.
M5	30-07-96	Xerox copy of the settlement.
M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
M7	28-05-91	Xerox copy of the order in W.P. No. 7872/91.
M8	15-05-98	Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa.
M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M10	Nil	Xerox copy of the wait list of Coimbatore Module.
M11	25-10-99	Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 24 जुलाई, 2007

का.आ. 2323.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 6/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-7-2007 को प्राप्त हुआ था।

[सं. एल-12012/317/1998-आईआर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 24th July, 2007

S.O. 2323.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 6/2004) of the Central Government Industrial Tribunal-Cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workman, received by the Central Government on 24-7-2007.

[No. L-12012/317/1998-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT:

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 6/2004

[Principal Labour Court CGID No. 7/99]

(In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workman)

BETWEEN

Sri R. Masilamani : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India,
Zonal Office, Coimbatore.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative.

For the Management : M/s. K. S. Sundar
, Advocates

AWARD

1. The Central Government Ministry of Labour, vide Order No. L-12012/317/98-IR (B-I) dated 01-02-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 7/99 and issued notices

to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this-CGIT-cum Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D.No. 6/2004.

2. The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri R. Masilamani, wait list No. 511 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Melapalayam branch from 01-10-1981. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Melapalayam branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 01-10-81, the Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working on temporary basis in Melapalayam branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not required any more and he need not attend the office from

1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Government to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been Regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Government for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and

when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 510 in waitlist of Zonal Office, Coimbatore. So far 211 wait listed temporary candidates, out of 705 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B, and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category; (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category; (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 705 wait listed candidates, 211 temporary employees were appointed and since the Petitioner was wait listed at 510 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of

Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

- (i) "Whether the demand of the Petitioner in Wait List No. 511 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment

thereupon as temporary messenger is justified?"

- (ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies. In subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the

Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M 10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.M1, M3 and M4 respectively. But, when

MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 compares of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M 10 namely wait list is not inconformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released /published even after' the Court order in WMP No. 11932/91 in W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex.M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M 1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner

that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that *"to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal."* Learned representative further contended that Ex. M 10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not 'produced any document show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/

Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that *'the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc.* It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and

their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the ID. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bonafide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 ILLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that *"in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen."* Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that *"therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement."* It further held that *"there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration."* Learned counsel for the Respondent further relied on the rulings reported in 1997 ILLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein

the Supreme Court has held that *"settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under section 18(1) of the I.D. Act and; (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also."* He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that *"settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable."* Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Government is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY,

KOLLAM JILLA HOTEL AND SHOPWORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that *"mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again."* It further held that *"the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits."* Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAG NATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that *"the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties."* He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that *"it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner."* He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that *"the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court."* Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/

Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VIJESH wherein the Supreme Court has held that *"the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Government service in an existing or a future vacancy."* In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that *"in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory."* He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that *"by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively."* He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that *"candidates included in merit list has no indefeasible right to appointment even if a vacancy exists"* and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held

that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc / temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these

temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode

of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under

such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent /Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:

For the Petitioner : WW1 Sri R. Masilamani
WW2 Sri V. S. Ekambaram

For the Respondent : MW1 Sri C. Mariappan
MW2 Sri S. Srinivasan

Documents Marked :—

Ex. No. Date

Description

W1 01-08-88 Xerox copy of the paper publication in daily Thanthi based on Ex. M1.

W2 20-04-88 Xerox copy of the administrative guidelines Issued by Respondent/Bank for implementation of Ex. M1.

W3 24-04-91 Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.

W4 01-05-91 Xerox copy of the advertisement in The Hindu on daily Wages based on Ex. W4.

W5 20-08-91 Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers.

W6 15-03-97 Xerox copy of the circular letter of Zonal Officer, Chennai About filling up of vacancies of messengers posts.

W7 25-03-97 Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.

W8 Nil Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work

W9 07-04-84 Xerox copy of the service certificate issued by Melapalayam Branch.

W10 06-06-85 Xerox copy of the service certificate issued by Melapalayam Branch.

W11 Nil Xerox copy of the administrative guidelines in reference book on staff matters by Respondent/Bank regarding recruitment to subordinate care & service conditions.

W12 Nil Xerox copy of the Vol. III of Reference book on Staff matters date 31-12-95.

W13 06-03-97 Xerox copy of the call latter from Madurai zonal office For interview of messenger post—V. Muralikannan.

W14 06-06-97 Xerox copy of the call letter from Madurai zonal office For interview of messenger post—K. Subburaj.

W15 06-03-97 Xerox copy of the call latter from Madurai zonal office For interview of messenger post—J. Velmurugan.

W16 17-03-97 Xerox copy of the service particulars—J. Velmurugan.

W17 26-03-97 Xerox copy of the letter advising selection of part time Menial—G. Pandit.

W18 31-03-97 Xerox copy of the appointment order to Sri G. Pandi.

W19 Feb. 2005 Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle.

W20 13-02-95 Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list.

W21 09-11-92 Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff.

W22 09-07-92 Xerox copy of the minutes of the Bipartite meeting.

W23 09-07-92 Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants.

W24 07-02-06 Xerox copy of the local Head Officer circular about Conversion of part time employees and redesignate them as general attendants.

W25 31-12-85 Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre.

For the Respondent/Management :—

Ex. No. Date

Description

M1 17-11-87 Xerox copy of the settlement.

M2 16-07-88 Xerox copy of the settlement.

M3 27-10-88 Xerox copy of the settlement.

M4 09-01-91 Xerox copy of the settlement.

M5 30-07-96 Xerox copy of the settlement.

M6 09-06-95 Xerox copy of the minutes of conciliation proceedings.

M7 28-05-91 Xerox copy of the order in W.P. No. 7872/91.

M8 15-05-98 Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa.

M9 10-07-99 Xerox copy of the order of Supreme Court in SLP No. 3082/99.

M10 Nil Xerox copy of the wait list of Coimbatore Module.

M11 25-10-99 Xerox copy of the order passed in CMP No.16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 24 जुलाई, 2007

का.अ. 2324.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 8/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-7-2007 को प्राप्त हुआ था।

[सं. एल-12012/319/1998-आईआर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 24th July, 2007

S.O. 2324.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 8/2004) of the Central Government Industrial Tribunal-Cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 24-7-2007.

[No. L-12012/319/1998-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 8/2004

[Principal Labour Court CGID No. 9/99]

[In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

BETWEEN

Sri R. Janarthanan : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India,
Zonal Office, Coimbatore.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative.

For the Management : M/s. K. S. Sunder Advocates

AWARD

1. The Central Government Ministry of Labour, vide Order No. L-12012/319/98-IR (B-I) dated 01-02-1999 has referred this dispute earlier to the Tamil Nadu Principal

Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 9/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D.No. 8/2004.

2. The Schedule mentioned in that order is as follows:

“Whether the demand of the workman Shri R. Janardhanan wait list No. 489 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Mettur Dam branch from 17-04-1979. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Mettur Dam branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 17-04-79, the Petitioner has been working as a temporary messenger and some time performing work in other branches also. While working on temporary basis in Mettur Dam branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not

required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Government for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not *bona fide* and made with ulterior motive. The Petitioner concealed the material facts that he was waitlisted as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and

when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 489 in waitlist of Zonal Office, Coimbatore. So far 211 wait listed temporary candidates, out of 705 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B, and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category; (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 705 wait listed candidates, 211 temporary employees were appointed and since the Petitioner was wait listed at 489 he was not appointed. The said settlements were *bona fide* which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of

Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

- (i) "Whether the demand of the Petitioner in Wait List No. 489 for restoring the wait list of temporary messenger. In the Respondent/Bank and consequential appointment thereupon as

temporary messenger is justified?"

- (ii) "To what relief the Petitioner is entitled?"

Point No. 1 :

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies. In subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter VA of the I.D. Act and it is preposterous to contend that the

Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS, the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause I of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause I is illegal. Clause I (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1

has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondents are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industry-wise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M 10 namely wait list is not in conformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released / published even after the Court Order in WMP No. 11932/91 in W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex.M10 does not carry particulars about the candidates' date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M 1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner

that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that *"to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal."* Learned representative further contended that Ex.M 10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/

Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme in the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Section 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that *"the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc."* It is further argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the

Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bonafide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 ILLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that *"in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen."* Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that *"therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement."* It further held that *"there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration."* Learned counsel for the Respondent further relied on the rulings reported in 1997 ILLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that *"settlements are divided*

into two categories namely (i) those arrived at outside the conciliation proceedings under section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that *"settlement is arrived at by the freewill of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable."* Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION

Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "*mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again.*" It further held that "*the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits.*" Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAG NATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "*the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties.*" He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "*it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner.*" He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "*the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court.*" Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VIJESH wherein the Supreme Court has held that "*the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Government service in an existing or a future vacancy.*" In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "*in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory.*" He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "*by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively.*" He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "*candidates included in merit list has no indefeasible right to appointment even if a vacancy exists*" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PLARA SINGH AND OTHERS wherein the Supreme Court has held that "*now coming to the direction that all those ad-hoc*

temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc / temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable." Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to

exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is

not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY, wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under

such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent /Bank.

18. Further, the representative for the Petitioner contended that in a similar case, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled ?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:

For the Petitioner	WW1 Sri R. Janardhanan WW2 Sri V. S. Ekambaram
For the Respondent	MW1 Sri C. Mariappan MW2 Sri S. Srinivasan.

Documents Marked :—

Ex. No.	Date	Description
W1	01-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W2	20-04-88	Xerox copy of the administrative guidelines Issued by Respondent/Bank for implementation of Ex. M1.
W3	24-04-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.
W4	01-05-91	Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers.
W6	15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts.
W7	23-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.
W9	14-04-83	Xerox copy of the service certificate issued by Mettur Dam Branch.
W10	1982-83	Xerox copy of working particulars of Petitioner.
W11	Nil	Xerox copy of the administrative guidelines in reference book on staff matters by Respondent/Bank regarding recruitment to subordinate care & service conditions.
W12	Nil	Xerox copy of the Vol. III of Reference book on Staff matters upto 31-12-95.
W13	06-03-97	Xerox copy of the call letter from Madurai Zonal Office for interview of messenger post—V. Muralikannan.
W14	06-03-97	Xerox copy of the call letter from Madurai Zonal Office for interview of messenger post—K. Subburaj
W15	06-03-97	Xerox copy of the call letter from Madurai Zonal Office for interview of messenger post—J. Velmurugan.

W16	17-03-97	Xerox copy of the service particulars—J. Velmurugan.
W17	26-03-97	Xerox copy of the letter advising selection of part time menial—G. Pandi
W18	31-03-97	Xerox copy of the appointment order to Sri G. Pandi.
W19	Feh. 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle.
W20	13-02-95	Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list.
W21	09-11-92	Xerox copy of the Head Office circular No. 28 regarding norms for sanction of messenger staff.
W22	09-07-92	Xerox copy of the minutes of the Bipartite meeting.
W23	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants.
W24	07-02-06	Xerox copy of the local Head Office circular about conversion of part time employees and redesignate them as general attendants.
W25	31-12-85	Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre.

For the Respondent/Management :—

Ex. No.	Date	Description
M1	17-11-87	Xerox copy of the settlement.
M2	16-07-88	Xerox copy of the settlement.
M3	27-10-88	Xerox copy of the settlement.
M4	09-01-91	Xerox copy of the settlement.
M5	30-07-96	Xerox copy of the settlement.
M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
M7	28-05-91	Xerox copy of the order in W.P. No. 7872/91.
M8	15-05-98	Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa.
M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M10	Nil	Xerox copy of the wait list of Coimbatore Module.
M11	25-10-99	Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 24 जुलाई, 2007

का.आ. 2325.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 7/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-7-2007 को प्राप्त हुआ था।

[सं. एल-12012/318/1998-आईआर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 24th July, 2007

S.O. 2325.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 7/2004) of the Central Government Industrial Tribunal-Cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 24-7-2007.

[No. L-12012/318/1998-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 7/2004

[Principal Labour Court CGID No. 8/99]

[In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

BETWEEN

Sri R. Jayaraj : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India,
Zonal Office, Coimbatore

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative.

For the Management : M/s. K. S. Sunder
Advocates

AWARD

1. The Central Government Ministry of Labour, vide Order No. L-12012/318/98-IR (B-I) dated 01-02-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken

the dispute on its file as CGID No. 8/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D.No. 7/2004.

2. The Schedule mentioned in that order is as follows:—

“Whether the demand of the workman Shri R. Jayaraj, wait list No. 471 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Tiruppur Main branch from 16-08-1984. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Tiruppur Main branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 16-08-1984, the Petitioner has been working as a temporary messenger and some time performing work in other branches also. While working on temporary basis in Tiruppur Main branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to

his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Government to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Government for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff

Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 471 in waitlist of Zonal Office, Coimbatore. So far 211 wait listed temporary candidates, out of 705 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B, and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 705 wait listed candidates, 211 temporary employees were appointed and since the Petitioner was wait listed at 471, he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged.

It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

- (i) "Whether the demand of the Petitioner in Wait List No. 471 for restoring the wait list of temporary messengers. In the Respondent/Bank and consequential appointment thereupon as temporary messenger is

justified?"

- (ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies. In subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for

appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular/instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was

not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 compares of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not in conformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released / published even after the Court order in WMP No. 11932/91 in W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex.M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners

were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that *"to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal."* Learned representative further contended that Ex.M 10 wait list has not been prepared in accordance with principle of seniority In the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not 'produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-

examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that *the expression 'actually worked under the employer'* cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the

Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I. D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bonafide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 ILLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 ILLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided

into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and; (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list Number given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Government is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS

UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAG NATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/

Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VIJEESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Government service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSANDASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held

that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these

temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed

to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by

settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent /Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:

For the Petitioner	WW1 Sri R. Jayaraj WW2 Sri V. S. Ekambaram
For the Respondent	MW1 Sri C. Mariappan MW2 Sri S. Srinivasan

Documents Marked :—

Ex. No.	Date	Description
W1	01-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W2	20-04-88	Xerox copy of the administrative guidelines Issued by Respondent/Bank for implementation of Ex. M1.
W3	24-04-91	Xerox copy of the the circular of Respondent/Bank to all Branchs regarding absorption of daily wagers in Messenger vacancies.
W4	01-05-91	Xerox copy of the advertisement in The Hindu on daily Wages based on Ex. W4.
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers.
W6	15-03-97	Xerox copy of the circular letter of Zonal Officer, Chennai About filling up of vacancies of messangers posts.
W7	25-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of massenger vacancies and filling them before 31-3-97.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casual not to be engaged at office. branches to do messengerial work.
W9	01-07-85	Xerox copy of the service certificate issued by Tiruppur Main Branch.
W10	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cafe & service conditions.
W11	Nil	Xerox copy of the Vol. III of Reference book on Staff matters date 31-12-95.
W12	06-03-97	Xerox copy of the latter from Madurai zonal office For interview of messenger post—V. Muralikannan.
W13	06-03-97	Xerox copy of the call letter from Madurai zonal office For interview of messenger post—K. Subburaj.
W14	06-03-97	Xerox copy of the letter from Madurai zonal office For interview of messenger post—J. Velmurugan.

W15	17-03-97	Xerox copy of the service particulars—J. Velmurugan.
W16	26-03-97	Xerox copy of the letter advising selection of part time Menial—G.Pandit.
W17	31-03-97	Xerox copy of the appointment order to Sri G. Pandi.
W18	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Mudurai Circle.
W19	13-02-95	Xerox copy of the Madurai Module Circule letter about Engaging temporary employees from the panel of wait list.
W20	09-11-92	Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff.
W21	09-07-92	Xerox copy of the minutes of the Bipartite meeting.
W22	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants.
W23	07-02-06	Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendents.
W24	31-12-85	Xerox copy of the local Head Officer circular about Appointment of temporary employees in subordinate cadre.

For the Respondent/Management :—

Ex. No.	Date	Description
M1	17-11-87	Xerox copy of the settlement.
M2	16-07-88	Xerox copy of the settlement.
M3	27-10-88	Xerox copy of the settlement.
M4	09-01-91	Xerox copy of the settlement.
M5	30-07-96	Xerox copy of the settlement.
M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
M7	28-05-91	Xerox copy of the order in W.P. No. 7872/91.
M8	15-05-98	Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa.
M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M10	Nil	Xerox copy of the wait list of Coimbatore Module.
M11	25-10-99	Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 24 जुलाई, 2007

का.आ. 2326.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 5/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-7-2007 को प्राप्त हुआ था।

[सं. एल-12012/316/1998-आईआर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 24th July, 2007

S.O. 2326.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 5/2004) of the Central Government Industrial Tribunal-Cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 24-7-2007.

[No. L-12012/316/1998-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 5/2004

[Principal Labour Court CGID No. 6/99]

(In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Smt. C. Krishnaveni : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India,
Zonal Office, Coimbatore

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative.

For the Management : M/s. K. S. Sunder
Advocates

AWARD

1. The Central Government Ministry of Labour, vide Order No. L-12012/316/98-IR (B-I) dated 01-02-1999 has referred this dispute earlier to the Tamil Nadu Principal

Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 6/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this-CGIT-cum Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D.No. 5/2004.

2. The Schedule mentioned in that order is as follows:

“Whether the demand of the workman Shri C. Krishnaveni wait list No. 540 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and She was given appointment as messenger after an interview and medical examination. She was appointed on temporary basis at Ooty Main branch from 1986. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Ooty Main branch. She was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where she initially worked as a class IV employee. From 1986, the Petitioner has been working as a temporary messenger and some time performing work in other branches also. While working on temporary basis in Ooty branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that her services are not required any more and she need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard

to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Government to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an un-reasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Government for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff

Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 540 in waitlist of Zonal Office, Coimbatore. So far 211 wait listed temporary candidates, out of 705 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B, and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 705 wait listed candidates, 211 temporary employees were appointed and since the Petitioner was wait listed at 540 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged.

It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. She was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

- (i) "Whether the demand of the Petitioner in Wait List No. 540 for restoring the wait list of temporary messenger in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"

- (ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies. In subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V A of the I. D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for

appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I. D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/ relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that

settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 compares of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M 10 namely wait list is not inconformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released / published even after the Court order in WMP No. 11932/91 in W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex.M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these

petitioners were engaged in leave vacancy, they have been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that *"to employ workmen as 'badlies', casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal."* Learned representative further contended that Ex. M 10 wait list has not been prepared in accordance with principle of seniority. In the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(c) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-

examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 11 LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that *"the expression 'actually worked under the employer cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc."* It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the

Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bonafide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 1 LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A P. AND OTHERS wherein under Section 12(3), the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that *"in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen."* Learned counsel for the Respondent further relied on the rulings reported in 1997 1 LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that *"therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement."* It further held that *"there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration."* Learned counsel for the Respondent further relied on the rulings reported in 1997 1 LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that *"settlements are divided*

into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that *"settlement is arrived at by the freewill of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable."* Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list Number given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Government is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS

UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that *"mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again."* It further held that *"the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits."* Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAG NATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that *"the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties."* He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that *"it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner."* He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that *"the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court."* Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/

Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VIJEESH wherein the Supreme Court has held that *"the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Government service in an existing or a future vacancy."* In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that *"in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory."* He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that *"by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively."* He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that *"candidates included in merit list has no indefeasible right to appointment even if a vacancy exists"* and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held

that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these

temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be

directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by

settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent /Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:

For the Petitioner : WW1 Smt. C. Krishnaveni
WW2 Sri V. S. Ekambaram

For the Respondent : MW1 Sri C. Mariappan
MW2 Sri S. Srinivasan

Documents Marked :—

Ex. No.	Date	Description
W1	01-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W2	20-04-88	Xerox copy of the administrative guidelines Issued by Respondent/Bank for implementation of Ex. M1.
W3	24-04-91	Xerox copy of the circular of Rsepondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.
W4	01-05-91	Xerox copy of the advertisement in The Hindu on daily Wages based on Ex. W4.
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers.
W6	15-03-97	Xerox copy of the circular letter of Zonal Officer, Chennai About filling up of vacancies of messangers posts.
W7	25-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of massenger vacancies and filling them before 31-3-97.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casual not to be engaged at office/branches to do messengerial work.
W9	01-07-85	Xerox copy of the service certificate issued by Ooty Branch.
W10	1986-87	Xerox copy of the service certificate issued by Ooty Holiday Home Branch.
W11	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate care & service condition.
W12	Nil	Xerox copy of the Vol. III of Reference book on Staff matters up to 31-12-95.
W13	06-03-97	Xerox copy of the call latter from Madurai zonal office For interview of messenger post—V. Muralikannan.
W14	06-03-97	Xerox copy of the call letter from Madurai zonal office For interview of messenger post—K. Subburaj.
W15	06-06-97	Xerox copy of the call letter from Madurai zonal office For interview of messenger post—J. Velmurugan.

W16	17-03-97	Xerox copy of the service particulars—J. Velmurugan.
W17	26-03-97	Xerox copy of the letter advising selection of part time Menial—G. Pandit.
W18	31-03-97	Xerox copy of the appointment order to Sri G. Pandi.
W19	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Mudurai Circle.
W20	13-02-95	Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list.
W21	09-07-92	Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff.
W22	09-07-92	Xerox copy of the minutes of the Bipartite meeting.
W23	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants.
W24	07-02-06	Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants.
W25	31-12-85	Xerox copy of the local Head Officer circular about Appointment of temporary employees in subordinate cadre.

For the Respondent/Management :—

Ex. No.	Date	Description
M1	17-11-87	Xerox copy of the settlement.
M2	16-07-88	Xerox copy of the settlement.
M3	27-10-88	Xerox copy of the settlement.
M4	09-01-91	Xerox copy of the settlement.
M5	30-07-96	Xerox copy of the settlement.
M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
M7	28-05-91	Xerox copy of the order in W.P. No. 7872/91.
M8	15-05-98	Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa.
M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M10	Nil	Xerox copy of the wait list of Coimbatore Module.
M11	25-10-99	Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 24 जुलाई, 2007

का.आ. 2327.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 1/2004) को प्रकटित करती है, जो केन्द्रीय सरकार को 24-7-2007 को प्राप्त हुआ था।

[सं. एल-12012/292/1998-आईआर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 24th July, 2007

S.O. 2327.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1/2004) of the Central Government Industrial Tribunal-Cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 24-7-2007.

[No. L-12012/292/1998-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 1/2004

[Principal Labour Court CGID No. 2/99]

(In the matter of the dispute for adjudiation under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri S. Salamon : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India,
Z. O. Coimbatore..

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative.

For the Management : M/s. K. S. Sundar, Advocates

AWARD

I. The Central Government Ministry of Labour, vide Order No. L-12012/292/98-IR (B-I) dated 01-02-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 2/99 and issued notices

to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this-CGIT-cum Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D.No. 1/2004.

2. The Schedule mentioned in that order is as follows:

“Whether the demand of the workman Shri S. Salamon, wait list No. 393 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Ketty Valley branch from 05-04-1986. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Ketty Valley branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 05-04-1986, the Petitioner has been working as a temporary messenger and some time performing work in other branches also. While working on temporary basis in Ketty Valley branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard

to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he had made a fresh representation to Government to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been Regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Government for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not *bona fide* and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff

Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 393 in waitlist of Zonal Office, Coimbatore. So far 211 wait listed temporary candidates, out of 705 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B, and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 705 wait listed candidates, 211 temporary employees were appointed and since the Petitioner was wait listed at 393 he was not appointed. The said settlements were *bona fide* which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to

say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

- (i) "Whether the demand of the Petitioner in Wait List No. 393 for restoring the wait list of temporary messengers. In the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"

- (ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies. In subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much

applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 **CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS** the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M 10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in

support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wages in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M 10 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released / published even after the Court order in WMP No. 11932/91 in W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M 1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement

on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that *"to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal."* Learned representative further contended that Ex.M 10 wait list has not been prepared in accordance with principle of seniority In the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only

in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 11 LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that *the expression 'actually worked under the employer'* cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bonafide and

are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that *"in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen."* Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that *"therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement."* It further held that *"there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration."* Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that *"settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act; and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second*

category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that *"settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable."* Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list Number given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Government is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that *"mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical*

defects in the wording of reference; subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VANSAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, It should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance..

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND

OTHERS Vs. K.V.VJEEESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Government service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment

Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a backdoor; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuance of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service

cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMADEVI, the Supreme Court has held that *merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right.*" Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, The Supreme court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time

beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim

Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent /Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K, JAYARAMAN, Presiding Officer

Witnesses Examined:

For the Petitioner	WW1 Sri S. Salamon
	WW2 Sri V. S. Ekambaram
For the Respondent	MW1 Sri C. Mariappan
	MW2 Sri S. Srinivasan

Documents Marked :—

Ex. No. Date.	Description	Ex. No. Date.	Description
W1 01-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.	W18 31-03-97	Xerox copy of the appointment order to Sri G. Pandi.
W2 20-04-88	Xerox copy of the administrative guidelines Issued by Respondent/Bank for implementation of Ex. M1.	W19 Feb., 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle.
W3 24-04-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.	W20 13-02-95	Xerox copy of the Madurai Module Circular letter about Engaging temporary employees for the panel of wait list.
W4 01-05-91	Xerox copy of the advertisement in The Hindu on daily Wages based on Ex. W4	W21 09-11-92	Xerox copy of Head Office circular No. 28 regarding Norms for sanction of messenger staff.
W5 20-08-91	Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers.	W22 09-07-92	Xerox copy of the minutes of the Bipartite meeting.
W6 15-03-97	Xerox copy of the circular letter of Zonal Officer, Chennai About filling up of vacancies of messengers posts.	W23 09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants.
W7 25-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies And filling them before 31-3-97.	W24 07-02-06	Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants.
W8 Nil	Xerox copy of the instruction in Reference book on staff about casual not to be engaged at office/branches to do messengerial work.	W25 31-12-95	Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre.
W9 03-10-96	Xerox copy of the service certificate issued by Ketty Valley Branch.	For the Respondent/Management :—	
W10 Nil	Xerox copy of the Employment Exchange card.	Ex. No. Date	Description
W11 Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Repondent/Bank regarding recruitment to subordinate care & service conditions.	M1 17-11-87	Xerox copy of the settlement.
W12 Nil	Xerox copy of the Vol. III of Reference book on Staff matters up to 31-12-95.	M2 16-07-88	Xerox copy of the settlement.
W13 06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V Muralikannan.	M3 27-10-88	Xerox copy of the settlement.
W14 06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj.	M4 09-01-91	Xerox copy of the settlement.
W15 06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan.	M5 30-07-96	Xerox copy of the settlement.
W16 17-03-97	Xerox copy of the service particulaers—J. Velmurugan.	M6 09-06-95	Xerox copy of the minutes of conciliation proceedings.
W17 26-03-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi.	M7 28-05-91	Xerox copy of the order in W.P. No. 7872/91.
		M8 15-05-98	Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa.
		M9 10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
		M10 Nil	Xerox copy of the wait list of Coimbatore Module.
		M11 25-10-99	Xerox copy of the order passed in CMP No.16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 24 जुलाई, 2007

का.आ. 2328.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 3/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-7-2007 को प्राप्त हुआ था।

[सं. एल-12012/314/1998-आईआर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 24th July, 2007

S.O. 2328.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 3/2004) of the Central Government Industrial Tribunal-Cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 24-7-2007.

[No. L-12012/314/1998-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 3/2004

[Principal Labour Court CGID No. 4/99]

(In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workman)

BETWEEN

Sri A. Janarthanan : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India,
Z. O. Coimbatore.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative.

For the Management : M/s. K. S. Sundar, Advocates

AWARD

1. The Central Government Ministry of Labour, vide Order No. L-12012/314/98-IR(B-I) dated 01-02-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken

the dispute on its file as CGID No. 4/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D.No. 3/2004.

2. The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri A. Janarthanan, wait list No. 241 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Mettupalayam branch from 29-07-1987. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Mettupalayam branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 29-07-1987, the Petitioner has been working as a temporary messenger and some time performing work in other branches also. While working on temporary basis in Mettupalayam branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not required any more and he need not attend the office from 1-4--97. Hence, the Petitioner raised a dispute with regard

to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Government to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Government for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not *bona fide* and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated

17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 241 in waitlist of Zonal Office, Coimbatore. So far 211 wait listed temporary candidates, out of 705 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B, and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 705 wait listed candidates, 211 temporary employees were appointed and since the Petitioner was wait listed at 241, he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements, directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per

settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

- (i) "Whether the demand of the Petitioner in Wait List No. 241 for restoring the wait list of temporary messengers. In the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies. In subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for

the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies; water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to

MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M 10 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released / published even after the Court order in WMPNo. 11932/91 in W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex.M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M 1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy

was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "*to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal.*" Learned representative further contended that Ex.M 10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence

of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds. have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION, wherein the Supreme Court has held that "*the expression 'actually worked under the employer'*" cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc." It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I. D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not *bona fide* and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per

length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the Federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 ILJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS, wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that *"in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen."* Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that *"therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement."* It further held that *"there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration."* Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS, wherein the Supreme Court has held that *"settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen*

of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS, wherein the Supreme Court has held that *"settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the Conciliation Officer must be fair and reasonable."* Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the Federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list Number given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Government is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS' UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM, wherein the Kerala High Court has held that *"mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery*

again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VANSAG NATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VIJESH wherein the Supreme Court has

held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Government service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no *mala fide* on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with *mala fide* motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc / temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a

notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a stillborn baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D.

Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LJI (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMADEVI, the Supreme Court has held that *merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right.* Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, The Supreme court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment,

he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations

with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a *bona fide* in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :—

For the Petitioner	WW1 Sri A. Janardhanan
	WW2 Sri V. S. Ekambaram
For the Respondent	MW1 Sri C. Marappaan
	MW2 Sri S. Srinivasan

Documents Marked :—

Ex.No. Date	Description
W1 01-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W2 20-04-88	Xerox copy of the administrative guidelines Issued by Respondent/Bank for implementation of Ex. M1.
W3 24-04-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.
W4 01-05-91	Xerox copy of the advertisement in The Hindu on daily Wages based on Ex. W4
W5 20-08-91	Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers.
W6 15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai About filling up of vacancies of messenger posts.
W7 25-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.
W8 Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.
W9 23-08-88	Xerox copy of the service certificate issued by Mettupalayam Branch.
W10 06-12-96	Xerox copy of service certificate issued by Mettupalayam Branch.
W11 Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate care & service conditions.
W12 Nil	Xerox copy of the Vol. III of Reference book on Staff matters up to 31-12-95.
W13 06-03-97	Xerox copy of the call letter from Madurai Zonal Office for interview of messenger post—V Muralikannan.
W14 06-03-97	Xerox copy of the call letter from Madurai Zonal Office for interview of messenger post—K. Subburaj.
W15 06-03-97	Xerox copy of the call letter from Madurai Zonal Office for interview of messenger post—J. Velmurugan.
W16 17-03-97	Xerox copy of the service particulars—J. Velmurugan
W17 26-03-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi.

W18 31-03-97	Xerox copy of the appointment order to Sri G. Pandi.
W19 Feb., 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle.
W20 13-02-95	Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list.
W21 09-11-92	Xerox copy of Head Office Circular No. 28 regarding Norms for sanction of messenger staff.
W22 09-07-92	Xerox copy of the minutes of the Bipartite meeting.
W23 09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants.
W24 07-02-06	Xerox copy of the local Head Office circular about Conversion of part-time employees and redesignate them as general attendants.
W25 31-12-95	Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre.

For the Respondent/Management :—

Ex.No. Date	Description
M1 17-11-87	Xerox copy of the settlement.
M2 16-07-88	Xerox copy of the settlement.
M3 27-10-88	Xerox copy of the settlement.
M4 09-01-91	Xerox copy of the settlement.
M5 30-07-96	Xerox copy of the settlement.
M6 09-06-95	Xerox copy of the minutes of conciliation proceedings.
M7 28-05-91	Xerox copy of the order in W.P. No. 7872/91.
M8 15-05-98	Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa.
M9 10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M10 Nil	Xerox copy of the wait list of Coimbatore Module.
M11 25-10-99	Xerox copy of the order passed in CMP No.16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 24 जुलाई, 2007

का.आ. 2329.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 267/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-7-2007 को प्राप्त हुआ था।

[सं. एल-12012/466/1998-आईआर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 24th July, 2007

S.O. 2329.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 267/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 24-7-2007.

[No. L-12012/466/1998-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 267/2004

[Principal Labour Court CGID No. 211/99]

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

BETWEEN

Sri A. Govindan : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India,
Z. O. Chennai.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised, Representative.

For the Management : M/s. K. S. Sunder,
Advocates

AWARD

1. The Central Government Ministry of Labour, vide Order No. L-12012/466/98-IR (B-I) dated 11-03-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken

the dispute on its file as CGID No. 211/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 267/2004.

2. The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri A. Govindan, wait list No. 416 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Chengalpeta branch from 28-10-1980. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Chengalpeta branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 28-10-1980, the Petitioner has been working as a temporary messenger and sometime performing work in other branches also. While working on temporary basis in Kalpakkam branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from

1-4--97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Government to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sasry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and

when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility alongwith similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 416 in waitlist of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B, and C. Considering their temporary service and subject to other eligibility criteria, under category (A); the temporary employees who were engaged for 240 days were to be considered and under category (B); the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C); the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 416 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of

Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

- (i) "Whether the demand of the Petitioner in Wait List No. 416 for restoring the wait list of temporary messengers. In the Respondent/Bank and consequential appointment

thereupon as temporary messenger is justified?"

- (ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the

Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come-first go' or 'first come-last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed

that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M 10 namely wait list is not inconformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after' the Court order in WMP No. 11932/91 in W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M 1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these

petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that *"to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal."* Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-

examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that *the expression 'actually worked under the employer'* cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had

accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I. D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 IL LJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that *"in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen."* Learned counsel for the Respondent further relied on the rulings reported in 1997 II LJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that *"therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement."* It further held that *"there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration."* Learned counsel for the Respondent further relied on the rulings reported in 1997 I LJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that *"settlements are divided into two categories namely (i)*

those arrived at outside the conciliation proceedings under section 18(1) of the I. D. Act and; (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that *"settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable."* Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list Number given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Government is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that *"mere wording of reference*

is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VANSAG NATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K. V. VIJESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Government service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARASINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad hoc temporary employees who have continued for more than a year should be

regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable." Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave

vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Anyhow, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly

held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined

For the Petitioner	WW1 Sri A. Govindhan
	WW2 Sri V. S. Ekambaram

For the Respondent	MW1 Sri C. Mariappan MW2 Sri C. Ramalingam	W16 17-03-97	Xerox copy of the service particulars—J. Velmurugan.
Documents Marked		W17 26-03-97	Xerox copy of the letter advising selection of part time menial—G. Pandi
Ex.No. Date	Description	W18 31-03-97	Xerox copy of the appointment order to Sri G. Pandi.
W1 01-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.	W19 Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai circle.
W2 20-04-88	Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1.	W20 13-02-95	Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list.
W3 24-04-91	Xerox copy of the circular of Respondent/Bank to all branches regarding absorption of daily wagers in messenger vacancies.	W21 09-11-92	Xerox copy of the Head Office circular No. 28 regarding norms for sanction of messenger staff.
W4 01-05-91	Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4.	W22 09-07-92	Xerox copy of the minutes of the bipartite meeting.
W5 20-08-91	Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers.	W23 09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants.
W6 15-03-97	Xerox copy of the circular letter of Zonal Officer, Chennai about filling up of vacancies of messengers posts.	W24 07-02-06	Xerox copy of the local head office circular about conversion of part time employees and redesignate them as general attendants.
W7 25-03-97	Xerox copy of the circular of Respondent/Bank to all branches regarding identification of messenger vacancies and filling them before 31-3-97.	W25 31-12-85	Xerox copy of the local head office circular about appointment of temporary employees in subordinate cadre.
W8 Nil	Xerox copy of the instruction in reference book on staff about casual not to be engaged at office/branches to do messengersial work.	For the Respondent/Management	
W9 06-05-05	Xerox copy of the service certificate issued by Chengalpet branch.	Ex.No. Date	Description
W10 05-05-05	Xerox copy of the service certificate issued by Kalpakkam branch.	M1 17-11-87	Xerox copy of the settlement.
W11 Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate care and service conditions.	M2 16-07-88	Xerox copy of the settlement.
W12 Nil	Xerox copy of the reference book on Staff matters Vol. III consolidated upto 31-12-95.	M3 27-10-88	Xerox copy of the settlement.
W13 06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan.	M4 09-01-91	Xerox copy of the settlement.
W14 06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj.	M5 30-07-96	Xerox copy of the settlement.
W15 06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan.	M6 09-06-95	Xerox copy of the minutes of conciliation proceedings.
		M7 28-05-91	Xerox copy of the order in W.P. No. 7872/91.
		M8 15-05-98	Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa.
		M9 10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
		M10 Nil	Xerox copy of the wait list of Chennai Module.
		M11 25-10-99	Xerox copy of the order passed in CMP No.16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 24 जुलाई, 2007

का.आ. 2330.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 4/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-7-2007 को प्राप्त हुआ था।

[सं. एल-12012/315/1998-आईआर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 24th July, 2007

S.O. 2330.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 4/2004) of the Central Government Industrial Tribunal-Cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 24-7-2007.

[No. L-12012/315/1998-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 4/2004

[Principal Labour Court CGID No. 5/99]

(In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri S. Baskar : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India,
Zonal Office, Coimbatore.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative.

For the Management : M/s. K. S. Sunder,
Advocates

AWARD

1. The Central Government, Ministry of Labour vide Order No. L-12012/315/98-IR (B-I) dated 'Nil' has referred

this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 5/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this-CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D.No. 4/2004.

2. The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri S. Baskar, wait list No. 538 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Mettur Dam branch from March, 1979. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Mettur Dam branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From March, 1979, the Petitioner has been working as a temporary messenger and some time performing work in other branches also. While working on temporary basis in Mettur Dam branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not

required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Government to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Government for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not *bona fide* and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those

employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-7-1988, 7-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 538 in waitlist of Zonal Office, Coimbatore. So far 211 wait listed temporary candidates, out of 705 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B, and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category; (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category; (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 705 wait listed candidates, 211 temporary employees were appointed and since the Petitioner was wait listed at 538 he was not appointed. The said settlements were *bona fide* which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such

plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

- (i) "Whether the demand of the Petitioner in Wait List No. 538 for restoring the wait list of temporary messengers. In the Respondent/

Bank and consequential appointment thereupon as temporary messenger is justified?"

- (ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies. In subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same 'guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of

the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 **CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS** the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are

marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M 10 namely wait list' is not inconformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released / published even after the Court order in WMP No. 11932/91 in W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex.M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M 1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is

further contended on behalf of the Petitioner that the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that *"to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal."* Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/

Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that *the expression 'actually worked under the employer'* cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and

their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bonafide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 ILLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that *"in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen."* Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that *"therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement."* It further held that *"there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration."* Learned counsel for the Respondent further relied on the rulings reported in 1997 ILLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein

the Supreme Court has held that *"settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and; (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also."* He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that *"settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable."* Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list Number given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Governments is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY,

KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that *"mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again."* It further held that *"the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits."* Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAG NATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that *"the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties."* He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that *"it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner."* He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that *"the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court."* Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/

Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VIJESH wherein the Supreme Court has held that *"the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Government service in an existing or a future vacancy."* In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that *"in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory."* He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that *"by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively."* He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that *"candidates included in merit list has no indefeasible right to appointment even if a vacancy exists"* and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held

that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable." Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these

temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode

of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under

such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :—

For the Petitioner	WW1 Sri S. Baskar WW2 Sri V. S. Ekambaram
For the Respondent	MW1 Sri C. Mariappan MW2 Sri S. Srinivasan

Documents Marked :—

Ex. No.	Date	Description
W1	01-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1
W2	20-04-88	Xerox copy of the administrative guidelines Issued by Respondent/Bank for implementation of Ex. M1
W3	24-04-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies
W4	01-05-91	Xerox copy of the advertisement in The Hindu on daily Wages based on Ex. W4
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers
W6	15-03-97	Xerox copy of the circular letter of Zonal Officer, Chennai About filling up of vacancies of messengers posts
W7	25-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies And filling them before 31-3-97
W8	Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengers work
W9	1-07-85	Xerox copy of the service certificate issued by Mettur Dam Branch
W10	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate care & service conditions
W11	Nil	Xerox copy of the Vol. III of Reference book on Staff matters upto 31-12-95
W12	06-03-97	Xerox copy of the call letter from Madurai zonal office For interview of messenger post—V. Muralikannan
W13	06-03-97	Xerox copy of the call letter from Madurai zonal office For interview of messenger post—K. Subburaj
W14	06-03-97	Xerox copy of the call letter from Madurai zonal office For interview of messenger post—J. Velmurugan

W15	17-03-97	Xerox copy of the service particulars—J. Velmurugan
W16	26-03-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi
W17	31-03-97	Xerox copy of the appointment order to Sri G. Pandi
W18	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle
W19	13-02-95	Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list
W20	09-11-92	Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff
W21	09-07-92	Xerox copy of the minutes of the Bipartite meeting
W22	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants
W23	07-02-06	Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants
W24	31-12-85	Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre

For the Respondent/Management :—

Ex. No.	Date	Description
M1	17-11-87	Xerox copy of the settlement.
M2	16-07-88	Xerox copy of the settlement.
M3	27-10-88	Xerox copy of the settlement.
M4	09-01-91	Xerox copy of the settlement.
M5	30-07-96	Xerox copy of the settlement.
M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
M7	28-05-91	Xerox copy of the order in W.P. No. 7872/91.
M8	15-05-98	Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa.
M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M10	Nil	Xerox copy of the wait list of Coimbatore Module.
M11	25-10-99	Xerox copy of the order passed in CMP No.16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 24 जुलाई, 2007

का.आ. 2331.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 266/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-7-2007 को प्राप्त हुआ था।

[सं. एल-12012/464/1998-आईआर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 24th July, 2007

S.O. 2331.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 266/2004) of the Central Government Industrial Tribunal-Cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 24-7-2007.

[No. L-12012/464/1998-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 266/2004

[Principal Labour Court CGID No. 210/99]

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri B. Pattabi : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India,
Z. O. Chennai.

APPEARANCE

For the Petitioner : Sri V.S. Ekambaram,
Authorised Representative.

For the Management : M/s. K. S. Sunder Advocates

AWARD

1. The Central Government Ministry of Labour, vide Order No. L-12012/464/98-IR (B-I) dated 11-03-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 210/99 and issued notices

to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 266/2004.

2. The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri B. Pattabi, wait list No. 480 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Egmore branch from 23-3-1981. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Egmore branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 23-3-1981, the Petitioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in I.H.O branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this

Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Government to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been Regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Government for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 7-10-1988, 9-1-1991 and

30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 715 in waitlist of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees, who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B, and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut-off date was extended up to 31-3-1997 for filling up vacancies which were to arise up to 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 715 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto

31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

- (i) "Whether the demand of the Petitioner in Wait List No. 480 for restoring the wait list of temporary messengers. In the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is entitled?"

Point No. 1

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies. In subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for

the Petitioner contended that in 1996 LAB & IC 2243 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B and C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so-called non-inclusion except his bald statement. Further, according to

MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 and 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released / published even after the Court order in WMP No. 11932/91 in W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex.M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M 1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy

was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "*to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal.*" Learned representative further contended that Ex. M 10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(c) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not 'produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/

Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 11 LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that *the expression 'actually worked under the employer'* cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bonafide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per

length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 1 LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that *"in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen."* Learned counsel for the Respondent further relied on the rulings reported in 1997 11 LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that *"therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement."* It further held that *"there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration."* Learned counsel for the Respondent further relied on the rulings reported in 1997 1 LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that *"settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under section 18(1) of the I.D. Act and; (ii) those arrived at in the course of conciliation proceedings under section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the*

establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that *"settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable."* Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list Number given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Government is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that *"mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery*

again." It further held that "*the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits.*" Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS wherein the Madhya Pradesh High Court has held that "*the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties.*" He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "*it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner.*" He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "*the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court.*" Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VIJESH wherein the Supreme Court has held that "*the only question which falls for determination*

in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Government service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "*in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory.*" He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "*by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively.*" He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "*candidates included in merit list has no indefeasible right to appointment even if a vacancy exists*" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "*now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had*

entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuance of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be

stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I. D. Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules."

Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "It is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a *bona fide* in nature or it has been arrived at on account of

mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer.

Witnesses Examined:—

For the Petitioner	WW1 Sri B. Pattabi
	WW2 Sri V. S. Ekambaram
For the Respondent	MW1 Sri C. Mariappan
	MW2 Sri C. Ramalingam

Documents Marked :—

Ex. No.	Date	Description
W1	01-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.

W2	20-04-88	Xerox copy of the administrative guidelines Issued by Respondent/Bank for implementation of Ex. M1.	W19	26-03-97	Xerox copy of the letter advising selection of part time Menial-G. Pandi.
W3	24-04-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.	W20	31-03-97	Xerox copy of the appointment order to Sri G. Pandi.
W4	01-05-91	Xerox copy of the advertisement in The Hindu on daily Wages based on Ex. W4.	W21	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle.
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers.	W22	13-02-95	Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list.
W6	15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai About filling up of vacancies of messenger posts.	W23	09-11-92	Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff.
W7	25-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.	W24	09-07-92	Xerox copy of the minutes of the Bipartite meeting.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.	W25	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms-creation of part time general attendants.
W9	22-06-81	Xerox copy of the service certificate issued by Egmore Branch.	W26	07-02-06	Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants
W10	14-12-82	Xerox copy of the service certificate issued by Egmore Branch.	W27	31-12-85	Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre.
W11	19-10-83	Xerox copy of the service certificate issued by Mannady Branch.	For the Respondent/Management :—		
W12	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding appointment of temporary employees.	Ex. No.	Date	Description
W13	Nil	Xerox copy of the Reference book on Staff matters Vol. III consolidated upto 31-12-95.	M1	17-11-87	Xerox copy of the settlement.
W14	23-01-98	Xerox copy of the letter from Petitioner to AGM of Respondent/Bank requesting to issue Service certificate.	M2	16-07-88	Xerox copy of the settlement.
W15	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post-V. Muralikannan.	M3	27-10-88	Xerox copy of the settlement.
W16	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post-K. Subburaj.	M4	09-01-91	Xerox copy of the settlement.
W17	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post-J. Velmurugan.	M5	30-07-96	Xerox copy of the settlement.
W18	17-03-97	Xerox copy of the service particulars -J. Velmurugan.	M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
			M7	28-05-91	Xerox copy of the order in W.P. No. 7872/91.
			M8	15-05-98	Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa.
			M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
			M10	Nil	Xerox copy of the wait list of Chennai Module.
			M11	25-10-99	Xerox copy of the order passed in CMP No.16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 24 जुलाई, 2007

AWARD

का.आ. 2332.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 264/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-7-2007 को प्राप्त हुआ था।

[सं. एल-12012/446/1998-आईआर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 24th July, 2007

S.O. 2332.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 264/2004) of the Central Government Industrial Tribunal-Cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 24-7-2007.

[No. L-12012/446/1998-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 264/2004

[Principal Labour Court CGID No. 208/99]

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen).

BETWEEN

Sri P. Arunachalam : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India,
Z. O. Chennai.

APPEARANCES

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative.

For the Management : Ms. K. Veeramani, Advocates

1. The Central Government Ministry of Labour, vide Order No. L-12012/446/98-IR (B-I) dated 11-03-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 208/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this-CGIT-cum Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as L-12012/446/98-IR (B-I) No. 264/2004.

2. The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri P. Arunachalam, wait list No. 641 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Maduranthagam branch. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Maduranthagam branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. The Petitioner has been working as a temporary messenger and some

time performing work in other branches also. While working on temporary basis in Maduranthagam branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Government to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been Regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Government for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not *bona fide* and made with

ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 636 in wait list of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B, and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 636 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected.

Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

- (i) "Whether the demand of the Petitioner in Wait List No. 641 for restoring the wait list of temporary messengers. In the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is entitled?"

Point No. 1:—

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies. In subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no

valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 I.A.B. & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M 10

in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 compares of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M 10 namely wait list is not in conformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released / published even after the Court order in WMP No. 11932/91 in W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex.M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list.

Above all, Ex. M 1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "*to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal.*" Learned representative further contended that Ex.M 10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, *mala fide* and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of

Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 111 LJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that *the expression 'actually worked under the employer'* cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view

of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not *bona fide* and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were *bona fide* which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 1 LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 11 LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight

and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 1 LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not *bona fide* in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list Number given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Government is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive

in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that *"mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again."* It further held that *"the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits."* Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAG NATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that *"the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties."* He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that *"it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner."* He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that *"the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court."* Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into

between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VIJESH wherein the Supreme Court has held that *"the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Government service in an existing or a future vacancy."* In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that *"in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory."* He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that *"by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively."* He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that *"candidates included in merit list has no indefeasible right to appointment even if a vacancy exists"* and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no *mala fide* on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with *mala fide* motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB

IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore,

learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will

be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :

For the Petitioner	WW1 Sri P. Arunachalam
	WW2 Sri V. S. Ekambaram
For the Respondent	MW1 Sri C. Mariappan
	MW2 Sri C. Ramalingam

Documents Marked :

Ex. No. Date	Description
W1 01-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W2 20-04-88	Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1.
W3 24-04-91	Xerox copy of the circular of Respondent/Bank to all regarding absorption of daily wagers in Messenger vacancies.
W4 01-05-91	Xerox copy of the advertisement in The Hindu on daily Wages based on Ex. W4.
W5 20-08-91	Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers.
W6 15-03-97	Xerox copy of the circular letter of Zonal Officer, Chennai about filling up of vacancies of messengers posts.
W7 25-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.
W8 Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.
W9 27-04-82	Xerox copy of the service certificate issued by Madurantakam Branch.
W10 29-04-95	Xerox copy of the service certificate issued by Madurantakam Branch.
W11 Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate care and service conditions.
W12 Nil	Xerox copy of the Reference book on Staff matters Vol. III consolidated upto 31-12-95
W13 11-05-05	Xerox copy of the letter from Petitioner to Respondent Requesting to issue service certificate.
W14 Nil	Xerox copy of the postal acknowledgement.
W15 06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post-V. Muralikannan.
W16 06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post-K. Subburaj.
W17 06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post -J. Veimurugan.

W18 17-03-97	Xerox copy of the service particulars-J. Veimurugan.
W19 26-03-97	Xerox copy of the letter advising selection of part time Menial-G. Pandi.
W20 31-03-97	Xerox copy of the appointment order to Sri. G. Pandi.
W21 Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle.
W22 13-02-95	Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list.
W23 09-11-92	Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff.
W24 09-07-92	Xerox copy of the minutes of the Bipartite meeting.
W25 09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms-creation of part time general attendants.
W26 07-02-06	Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants.
W27 21-12-85	Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre.

For the Respondent/Management :

Ex. No. Date	Description
M1 17-11-87	Xerox copy of the settlement.
M2 16-07-88	Xerox copy of the settlement.
M3 27-10-88	Xerox copy of the settlement.
M4 09-01-91	Xerox copy of the settlement.
M5 30-07-96	Xerox copy of the settlement.
M6 09-06-95	Xerox copy of the minutes of conciliation proceedings.
M7 28-05-91	Xerox copy of the order in W.P. No. 7872/91.
M8 15-05-98	Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa.
M9 10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M10 Nil	Xerox copy of the wait list of Chennai Module.
M11 25-10-99	Xerox copy of the order passed in CMP No.16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 24 जुलाई, 2007

का.आ. 2333.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 33/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-7-2007 को प्राप्त हुआ था।

[सं. एल-12012/576/1998-आईआर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 24th July, 2007

S.O. 2333.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 33/2004) of the Central Government Industrial Tribunal-Cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 24-7-2007.

[No. L-12012/576/1998-IR (B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 33/2004

[Principal Labour Court CGID No. 331/99]

(In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947.(14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri P. M. Gunaseelan : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India,
Z. O. Coimbatore

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative.

For the Management : M/s. K. Veeramani Advocates

AWARD

1. The Central Government Ministry of Labour, vide Order No. L-12012/576/98-IR (B-1) dated 26-03-1999 has referred this dispute earlier to the Tamil Nadu Principal

Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 331/99 and issued notices to both parties. Both sides entered appearance and filed their Claim Statement and Counter Statement respectively. After the constitution of this CGIT-cum, Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D.No. 33/2004.

2. The Schedule mentioned in that order is as follows :—

“Whether the demand of the workman Shri P. M. Gunaseelan, wait list No. 473 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Tiruchengodu branch. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. The Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working on temporary basis in the branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that

his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Government to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of Para 522 (4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Government for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not *bona fide* and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/

Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 473 in wait list of Zonal Office, Coimbatore So far 211 wait listed temporary candidates, out of 705 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B, and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 705 wait listed candidates, 211 temporary employees were appointed and since the Petitioner was wait listed at 473 he was not appointed. The said settlements were *bona fide* which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any

union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights

of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

- (i) "Whether the demand of the Petitioner in Wait List No. 473 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies. In subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the

Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving

at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so-called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 compares of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not inconformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released /published even after, the Court order in WMP No. 11932/91 in W.P. No. 7872/91 directing

the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex.M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M 1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'haddies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex.M 10 wait list has not been prepared in accordance with principle of seniority. In the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/

Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 11 LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal.

In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 ILLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL. A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 ILLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that

"therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 ILLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and; (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the

workman with wait list Number given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified? The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Government is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/

Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VIJESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Government service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to

appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARASINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad hoc / temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is

unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so-called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS. Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory. on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors. "Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment

with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not

entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :—

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:

For the Petitioner : WW1 Sri P. M. Gunaseelan
WW2 Sri V. S. Ekambaram

For the Respondent : MW1 Sri C. Mariappan
MW2 Sri S. S. Srinivasan

Documents Marked :

Ex. No.	Date	Description
W1	01-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W2	20-04-88	Xerox copy of the administrative guidelines Issued by Respondent/Bank for implementation of Ex. M1.
W3	24-04-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.
W4	01-05-91	Xerox copy of the advertisement in The Hindu on daily Wages based on Ex. W4.
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers.
W6	15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messengers posts.
W7	25-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work
W9	08-08-88	Xerox copy of the service certificate issued by Tiruchengodu Branch.
W10	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre & service conditions.
W11	Nil	Xerox copy of the Reference book on Staff matters Vol. III consolidated upto 31-12-95.
W12	06-03-97	Xerox copy of the call letter from Madurai Zonal Office for interview of messenger post—V. Muralikannan.
W13	06-03-97	Xerox copy of the call letter from Madurai Zonal Office for interview of messenger post—K. Subburaj.

W14	06-03-97	Xerox copy of the call letter from Madurai Zonal Office for interview of messenger post—J. Velmurugan.
W15	17-03-97	Xerox copy of the service Particulars—J. Velmurugam.
W16	26-03-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi.
W17	31-03-97	Xerox copy of the appointment order to Sri G. Pandi
W18	Feb.2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle.
W19	13-02-95	Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list.
W20	09-11-92	Xerox copy of the Head Office circular No. 28 regarding norms for sanction of messenger staff.
W21	09-07-92	Xerox copy of the minutes of the Bipartite meeting.
W22	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff bank of India Staff Federation for implementation of norms—creation of part time general attendants.
W23	07-02-06	Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants.
W24	31-12-85	Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre.

For the Respondent/Management :—

Ex. No.	Date	Description
M1	17-11-87	Xerox copy of the settlement.
M2	16-07-88	Xerox copy of the settlement.
M3	27-10-88	Xerox copy of the settlement.
M4	09-01-91	Xerox copy of the settlement.
M5	30-07-96	Xerox copy of the settlement.
M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
M7	28-05-91	Xerox copy of the order in W.P. No. 7872/91.
M8	15-05-98	Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa.
M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M10	Nil	Xerox copy of the wait list of Coimbatore Module.
M11	25-10-99	Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 26 जुलाई, 2007

क्र.आ. 2334.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 270/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-7-2007 को प्राप्त हुआ था।

[सं. एल-12012/490/1998-आईआर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 26th July, 2007

S.O. 2334.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 270/2004) of the Central Government Industrial Tribunal-Cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 26-7-2007.

[No. L-12012/490/1998-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 270/2004

[Principal Labour Court CGID No. 214/99]

(In the matter of the dispute for adjudication under clause(d) of sub-section (I) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri L. Arul : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India,
Z. O. Chennai

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative.

For the Management : M/s. K. S. Sunder, Advocates

AWARD

1. The Central Government Ministry of Labour, vide Order No. L-12012/490/98-IR (B-I) dated 10-03-1999 has referred this dispute earlier to the Tamil Nadu Principal

Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 214/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this-CGIT-cum Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D.No. 270/2004.

2. The Schedule mentioned in that order is as follows:

“Whether the demand of the workman Shri L. Arul, wait list No. 489 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Manadi branch from 03-01-1984. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Mannadi branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 31-1-1984, the Petitioner has been working as a temporary messenger and some time performing work in other branches also. While working on temporary basis in Purasawalkam branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not

required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Government to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of Para 522 (4) of Sasry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Government for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not *bona fide* and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/

Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 489 in waitlist of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B, and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category, (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 489 he was not appointed. The said settlements were *bona fide* which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu

Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

(i) "Whether the demand of the Petitioner in Wait List No. 378 for restoring the wait list of temporary messengers. In the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"

(ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies. In subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service

exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M 10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as

to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India. Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 compares of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not inconformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released /published even after the Court order in WMP No. 11932/91 in W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M 1 was not produced at the time of conciliation proceedings held during the year

1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the I. D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies', casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority. In the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(c) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP

No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc." It is further argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view

of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bonafide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 11 LJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 11 LJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective

bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 1 LJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list Number given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Government is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAG NATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed

for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K. V. VIJESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Government service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the

rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARASINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming

these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 IJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory. on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued

permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either

the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January. 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:

For the Petitioner	WW 1 Sri L. Arul WW 2 Sri V. S. Ekambaram
For the Respondent	MW 1 Sri C. Mariappan MW 2 Sri C. Ramalingam

Documents Marked:

Ex. No.	Date	Description
W 1	01-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W 2	20-04-88	Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1
W 3	24-04-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.
W 4	01-05-91	Xerox copy of the advertisement in The Hindu on daily Wages based on Ex. W 4
W 5	20-08-91	Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers
W 6	15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messengers posts
W 7	25-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97
W 8	Nil	Xerox copy of the instruction in Reference book on staff about casual not to be engaged at office/branches to do messengerial work
W 9	03-12-87	Xerox copy of the service certificate issued by Mannady Branch
W 10	17-02-98	Xerox copy of the service certificate issued by Purasawalkam branch
W 11	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate care & serve conditions
W 12	Nil	Xerox copy of the Reference book on Staff matters Vol. III consolidated upto 31-12-95
W 13	06-03-97	Xerox copy of the call letter from Madurai Zonal Office for interview of messenger post—V. Muralikannan
W 14	06-03-97	Xerox copy of the call letter from Madurai Zonal Office for interview of messenger post—K. Subburaj
W 15	06-03-97	Xerox copy of the call letter from Madurai Zonal Office for interview of messenger post—J. Velmurugan

W 16	17-03-97	Xerox copy of the service Particulars—J. Velmurugan
W 17	26-03-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi
W 18	31-03-97	Xerox copy of the appointment order to Sri G. Pandi
W 19	Feb.2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle
W 20	13-02-92	Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list
W 21	09-11-92	Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff
W 22	09-07-92	Xerox copy of the minutes of the Bipartite meeting
W 23	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff bank of India Staff Federation for implementation of norms—creation of part time general attendantss
W 24	07-02-06	Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants
W 25	31-12-85	Xerox copy of the local Head Officer circular about Appointment of temporary employees in subordinate cadre

For the Respondent/Management :

Ex. No.	Date	Description
M 1	17-11-87	Xerox copy of the settlement.
M 2	16-07-88	Xerox copy of the settlement.
M 3	27-10-88	Xerox copy of the settlement.
M 4	09-01-91	Xerox copy of the settlement.
M 5	30-07-96	Xerox copy of the settlement.
M 6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
M 7	28-05-91	Xerox copy of the order in W.P. No. 7872/91.
M 8	15-05-98	Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa.
M 9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M 10	Nil	Xerox copy of the wait list of Chennai Module.
M 11	25-10-99	Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 25 जुलाई, 2007

का.आ. 2335.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस. सी. सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (संदर्भ संख्या 10/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-7-2007 को प्राप्त हुआ था।

[सं. एल-22013/1/2007-आईआर(सी-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 25th July, 2007

S.O. 2335.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 10/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SCCL and their workmen, received by the Central Government on 25-7-2007.

[No. L-22013/1/2007-IR (C-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
AT HYDERABAD
PRESENT**

Shri T. Ramachandra Reddy, Presiding Officer

Dated the 11th Day of July, 2007

L.C.L.D. No. 10/2004

BETWEEN

Sri Rajju Pasi,
S/o Kalioin Pasi,
C/o Sri S. Rajeshwar Reddy,
Advocate, Malakpet,
Hyderabad

....Petitioner

AND

The General Manager,
M/s. Singareni Collieries Co. Ltd.,
Yellandu, Khammam District

.... Respondent

APPEARANCES

For the Petitioner : M/s. S. Rajeshwar Reddy &
P. Sudheer Rao, Advocates.

For the Respondent : M/s. K. Srinivasan Murthy, V.
Uma Devi, C. Vijay Sekher
Reddy & S. Vijay Venkatesh,
Advocates

AWARD

1. This is an application filed by the Petitioner Sri Rajju Pasi under Sec. 2A (2) of Industrial Disputes Act, 1947 seeking the relief of reinstatement into the service with back wages and all attendant benefits by holding the action of the Respondent in issuing the proceedings dated 31-7-2002 to the Petitioner (resignation acceptance proceedings) as illegal and arbitrary against the

Respondent, the Genral Manager, M/s. Singareni Collieries Co. Ltd., Yellandu.

2. This case was taken in view of the judgment of the Hon'ble High Court of Andhra Pradesh reported in 1997 (3) LLJ Supplement, page 1141 in W.P. No. 8395 of 1989 dated 3-8-1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others.

3. The Petitioner submitted his claim statement that he was appointed as a coal filler in the year 1987 at J K Incline-5 and that the Petitioner performing his duties to the satisfaction of his superiors. He fell sick in the year 2002 and requested the Respondent to allot surface general duty. But his request was not considered. The Respondent has issued a chargesheet dated 27-3-2003 alleging that he was unauthorisedly absent from duties without sufficient cause during the year 2002 and that he submitted his explanation denying the charges. It is further submitted that the Respondent started victimizing the Petitioner on making the representation for allotment of surface duty and forcibly taken his signatures on blank papers assuring him that he will be given surface general duty. It is further submitted that the Respondent issued office order dated 24-7-2003 alleging that the Petitioner submitted resignation dated 1-6-2003 and the same was accepted. The action of the Respondent terminating his services under the guise of resignation is illegal and void. In fact no resignation letter was submitted and the signatures on the blank papers are misused. It is further submitted that the Petitioner was taken treatment in the Yellandu Collieries Hospital. Hence, the allegations made in the charge sheet dated 27-3-2003 are false.

The Respondent filed counter and denied the averments made in the petition and pleaded that the proper procedure to entertain the petition is only after failure of conciliation proceedings. It is further submitted that the Petitioner has resigned from the company's services by submitting resignation letter dated 1-6-2003 requesting the Respondent to accept the same with immediate effect. The Petitioner's wife and two co-workers attested the signature on the resignation letter. The resignation of the Petitioner was accepted and communicated to the Petitioner by letter dated 24-7-2003 and his name was removed from the rolls of the company. Since, the Petitioner has resigned and the same was accepted and communicated to the Petitioner, the Petitioner has no right to file the present petition. The Petitioner was chargesheeted for his unauthorized absence but the same was not acted upon. It is further submitted that the Petitioner has never informed the Respondent about his signatures and allotment of surface general duty. The Petitioner was chargesheeted for his unauthorized absence for a period of 182 days during the year 2002, but enquiry was not conducted.

5. Petitioner examined himself as WW1 and got marked the Xerox copies of documents Exs. W1 to W6. Ex. W1 is the identity card. Ex. W2 is the salary slip, Ex. W3 is the charge sheet dated 27-3-2003. Ex. W4 is the representation dated 12-4-2003. Ex. W5 is the office order dated 24-7-2003 stating that the Petitioner has submitted his resignation on 1-6-2003. Ex. W6 is the letter issued by the Yellandu Collieries Hospital on 12-8-2003.

6. As against this evidence the Respondent filed evidence affidavit of Sri Mohd. Abbas, Assistant Manager, in Yellandu area of Singareni Collieries Company Limited and got marked the following documents: Ex. M1 is the resignation letter dated 1-6-2003 and Ex. M2 is the acceptance letter dated 24-7-2003. MW1 reiterated the averments made in the counter.

7. The Petitioner has stated that he joined Respondent Company as coal filler in the year 1987 and his service were regularized in the year 1990 as coal filler and when he was working at JK-5 Yellandu he fell sick in the year 2002, he requested the Respondent to allot surface duty but his request was not considered. After submitting his representation Ex. W4, the thumb impression of the Petitioner was taken on a blank paper assuring him that he will be given work on surface. But the Respondent has issued order dated 24-7-2003 alleging that he submitted his resignation and the same was accepted. In fact, he did not submit his resignation.

8. It is not in dispute that the Petitioner was chargesheeted for unauthorized absenteeism in the year 2002 but domestic enquiry was not conducted to the charge sheet. It is pleaded by Respondent that the petitioner has voluntarily submitted his resignation letter Ex. M1, attested by his wife and two Company-workers and the same was accepted by the Respondent and accordingly proceedings were issued. After accepting the resignation the Petitioner was paid all the benefits such as, PF, Gratuity and family benefit-cum-Insurance accumulation amount. The Petitioner having received terminal benefits has no case in the present proceedings.

9. The Learned Counsel for the Petitioner contended that the Petitioner on account of his ill-health could not attend his duties during the year 2002 and that a charge sheet was issued for which he gave explanation. It is further contended that thumb impression of the Petitioner was taken fraudulently assuring him that he will be given surface duty and converted the same into a resignation letter. As such the Petitioner is entitled for reinstatement with all benefits.

10. On the other hand, the Learned Counsel for the Respondent contended that the Petitioner was absented unauthorizedly during the year 2002 for which a charge sheet was issued and the same was not acted upon on account of resignation submitted by the Petitioner and further stated that the resignation letter was attested by his wife and two Company-workers and the same was accepted and accordingly proceedings were issued and further pointed out that all terminal benefits were paid.

11. The burden lies on the Petitioner to show that thumb impression of the Petitioner was fraudulently taken by the Respondent to officials and converted into the resignation letter and the proceedings were issued accepting the same. It is not in dispute that the Petitioner

was chargesheeted for his unauthorized absence and enquiry was not conducted in respect of the allegations made in the chargesheet. The Petitioner has not adduced any evidence that his thumb impression was fraudulently taken by the Respondent except his self-served statement. His wife and two other Co-workers who attested the resignation were not examined by the Petitioner to disprove the resignation letter. Further the Petitioner could not state who has prevailed on him and gave assurance regarding his posting on surface and obtained his thumb impression. Absolutely there is no material to prove that the Respondent has fraudulently obtained thumb mark on blank papers and converted into resignation letter. Further there is no necessity for the officials of the Respondent to obtain the resignation letter when he is not inclined to resign from the job. The conduct of the Petitioner that he has taken terminal benefits also shows that he has resigned the job and received the terminal benefits. On considering the material on record, I hold that the Petitioner has voluntarily resigned his job and the same was accepted by Respondent and the proceedings were communicated to him. It should be noted that the Petitioner has not made by any representation subsequent to the proceedings before the Respondent that his thumb impression was taken fraudulently by officials of the Respondent and converted into resignation letter. On considering the material on record, I hold that Petitioner has resigned and the same was accepted by the Respondent and the Petitioner is not entitled for any relief. In the result, an Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowari, Personal Assistant, transcribed by her and corrected by me on this the 11th day of July, 2007.

T. RAMACHANDRA REDDY, Presiding Officer
Appendix of evidence

Witness examined for the Petitioner	Witness examined for the Respondent
WW1 : Sri Rajju Pasi	MW1 : Sri Mohd. Abbas

Documents marked for the Petitioner

Ex. W1 : Copy of identity card
Ex. W2 : Copy of salary slip
Ex. W3 : Copy of chargesheet dt. 27-3-2003
Ex. W4 : Copy of representation dt. 12-4-2003
Ex. W5 : Copy of Respondent's reply dt. 24-7-2003
Ex. W6 : Copy of letter issued by Yellandu Collieries hospital dt. 12-8-2003
Ex. W7. Copy of chargesheet dt. 27-3-2003

Documents marked for the Respondent

Ex. M1: Resignation letter dt. 1-6-2003
Ex. M2: Acceptance letter dt. 24-7-2003

नई दिल्ली, 26 जुलाई, 2007

का.आ. 2336.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 269/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-7-2007 को प्राप्त हुआ था।

[सं. एल-12012/472/1998-आईआर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 26th July, 2007

S.O. 2336.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 269/2004) of the Central Government Industrial Tribunal-Cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 26-7-2007.

[No. L-12012/472/1998-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 269/2004

[Principal Labour Court CGID No. 213/99]

[In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

BETWEEN

Sri P. Jayapal : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India,
Z. O. Chennai.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative.

For the Management : M/s. K. S. Sunder, Advocates

AWARD

1. The Central Government Ministry of Labour, *vide* Order No. L-12012/472/98-IR (B-I) dated 11-3-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 213/99 and issued notices

to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D.No. 269/2004.

2. The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri P. Jayapal, wait list No. 378 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Kilpauk branch from 11-02-1982. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Kilpauk branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 11-02-1982, the Petitioner has been working as a temporary messenger and some time performing work in other branches also. While working on temporary basis in Leather International branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication.

Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Government to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Government for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996.

The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 378 in wait list of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B, and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category, (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category, (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 378 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against

the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

- (i) "Whether the demand of the Petitioner in Wait List No.378 for restoring the wait list of temporary messengers. In the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for

the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular/instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to

MW1 wait list under Ex.M 10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M 10 namely wait list is not in conformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after, the Court order in WMP No. 11932/91 in W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex.M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M 1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy

was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "*to employ workmen as 'badlies casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal.*" Learned representative further contended that Ex.M 10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in "accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes

post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Section 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 11 LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that *the expression 'actually worked under the employer'* cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bonafide and are made with ulterior motive. Further, they have concealed

the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 ILLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that *"in the absence of plea that the settlement reached in the course of Conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen."* Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that *"therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement."* It further held that *"there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration."* Learned counsel for the Respondent further relied on the rulings reported in 1997 ILLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that *"settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has*

extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that *"settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable."* Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list Number given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Government is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that *"mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor*

workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VANSAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VJEEESH wherein the Supreme Court has

held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Government service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a

notification calling for applications which means he had entered by a back door (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D.

Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Anyhow, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. Further,

in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account

of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent /Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined: —

For the Petitioner	WW1 Sri P. Jayapal WW2 Sri V. S. Ekambaram
For the Respondent	MW1 Sri C. Mariappan MW2 Sri C. Ramalingam

Documents Marked :—

Ex. No.	Date	Description
W1	01-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.

W2	20-04-88	Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1	W20	26-03-97	Xerox copy of the latter advising selection of part time Menial—G. Pandi
W3	24-04-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.	W21	31-03-97	Xerox copy of the Appointment Order to G. Pandi
W4	01-05-91	Xerox copy of the advertisement in The Hindu on daily Wages based on Ex. W4	W22	Feb. 2005	Xerox copy of the slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers	W23	13-02-95	Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list
W6	15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai About filling up of vacancies of messengers posts	W24	9-11-92	Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff
W7	25-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.	W25	09-07-92	Xerox copy of the minutes of the Bipartite meeting
W8	Nil	Xerox copy of the instruction in Reference book on staff about casual/ not to be engaged at office/branches to do messengerial work	W26	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants
W9	21-05-84	Xerox copy of the service certificate issued by Kilapauk Branch	W27	07-02-06	Xerox copy of the local Head Office circular about Conservation of part time employees and redesignate them as general attendants
W10	04-07-89	Xerox copy of the interview letter	W28	31-12-85	Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre
W11	03-12-93	Xerox copy of the service certificate issued by Salaiyur Branch.	For the Respondent/Management :—		
W12	03-12-93	Xerox copy of the service certificate issued by Overseas Branch.	Ex. No.	Date	Description
W13	29-03-96	Xerox copy of the service certificate issued by Leather International Branch..	M1	17-11-87	Xerox copy of the settlement.
W14	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre & service conditions..	M2	16-07-88	Xerox copy of the settlement.
W15	Nil	Xerox copy of the Reference book on Staff matters Vol. III consolidated upto 31-12-95	M3	27-10-88	Xerox copy of the settlement.
W16	06-03-97	Xerox copy of the call letter from madurai zonal office For interview of messenger post—V. Muralikannan	M4	09-01-91	Xerox copy of the settlement.
W17	06-03-97	Xerox copy of the call letter from Madurai zonal office For interview of messenger post—K. Subburaj	M5	30-07-96	Xerox copy of the settlement.
W18	06-03-97	Xerox copy of the call letter from Madurai zonal office For interview of messenger post—J. Velmurugan	M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
W19	17-03-97	Xerox copy of the service particulars—J. Velmurugan	M7	28-05-91	Xerox copy of the order in W.P. No. 7872/91.
			M8	15-05-98	Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa.
			M9	10-07-99	Xerox copy of order of Supreme Court in SLP No. 3082/99.
			M10	Nil	Xerox copy of the wait list of Chennai Module.
			M11	25-10-99	Xerox copy of the order passed in CMP No. 16289 & 162290/99 in W.A. No. 1893/99

नई दिल्ली, 26 जुलाई, 2007

का.आ. 2337.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 284/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-7-2007 को प्राप्त हुआ था।

[सं. एल-12012/337/1998-आईआर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 26th July, 2007

S.O. 2337.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 284/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 26-07-2007.

[No. L-12012/337/1998-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

Shri K. JAYARAMAN, Presiding Officer

Industrial Dispute No. 284/2004

(Principal Labour Court CGID No. 340/99)

(In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri P. Ravi : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management
State Bank of India,
Z. O. Chennai.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative.

For the Management : M/s. K. S. Sunder,
Advocates.

AWARD

1. The Central Government Ministry of Labour, vide Order No. L-12012/337/98-IR (B-I) dated 26-02-1999 has referred this dispute earlier to the Tamil Nadu Principal

Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No 340/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this-CGIT-cum Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D.No. 284/2004.

2. The Schedule mentioned in that order is as follows:—

“Whether the demand of the workman Shri P. Ravi, wait list No.428 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Overseas branch from June, 1982. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Overseas branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From June, 1984, the Petitioner has been working as a temporary messenger and some time performing work in other branches also. While working on temporary basis in L.H.O. Chennai branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not required any more and he need not attend the office from 1-4-1997. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in

failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Government to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastri Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Government for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not *bona fide* and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated

17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No 428 in wait list of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B, and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category; (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category; (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 428 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto

31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

- (i) "Whether the demand of the Petitioner in Wait List No. 428 for restoring the wait list of temporary messengers. In the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies. In subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for

the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M 10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex. M 10 was prepared, but it is mentioned in Ex. M 10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to

MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M 10 namely wait list is not inconformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released / published even after the Court order in WMP No. 11932/91 in W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M 1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy

was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that *"to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal."* Learned representative further contended that Ex. M 10 wait list has not been prepared in accordance with principle of seniority. In the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No.11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes

post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression *'actually worked under the employer'* cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bonafide and are made with ulterior motive. Further, they have concealed

the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 1 LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 11 LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of malafides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 11 LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has

extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list Number given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Government is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor

workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VANSAG NATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND

OTHERS Vs. K.V.VIJESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Government service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc / temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was

he appointed in pursuance of a notification calling for applications which means he had entered by a back door (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service

cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely

on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list.

Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent /Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:—

For the Petitioner	WW1 Sri P. Ravi WW2 Sri V. S. Ekambaram
For the Respondent	MW1 Sri C. Mariappan MW2 Sri C. Ramalingam

Documents Marked :—

Ex. No.	Date	Description
W1	01-08-88	Xerox copy of the paper publication in daily Thanthi based in Ex. M1.

W2	20-04-88	Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1	W19	26-03-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi.
W3	24-04-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in messenger vacancies.	W20	31-03-97	Xerox copy of the letter appointment order to Sri G. Pandi.
W4	01-05-91	Xerox copy of the advertisement in The Hindu on daily Wages based on Ex. W4.	W21	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February 2005 wait list No. 395 of Madurai Circle.
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers.	W22	13-02-95	Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the pannel of wait list.
W6	15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts.	W23	09-11-92	Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff.
W7	25-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.	W24	09-07-92	Xerox copy of the minutes of the Bipartite meeting.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.	W25	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants.
W9	07-10-85	Xerox copy of the service certificate issued by Overseas Branch.	W26	09-02-92	Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants.
W10	20-01-93	Xerox copy of the service certificate issued by Orveses Branch.	W27	31-12-85	Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre.
W11	12-01-95	Xerox copy of the service certificate issued by Overseas Branch.	For the Respondent/Management :—		
W12	03-04-97	Xerox copy of the service certificate issued by Sowcarpet Branch.	Ex. No.	Date	Description
W13	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding appointment of temporary employees.	M1	17-11-87	Xerox copy of the settlement.
W14	Nil	Xerox copy of the Reference Book on Staff Matters Vol. III consolidated upto 31-12-95.	M2	16-07-88	Xerox copy of the settlement.
W15	06-03-97	Xerox copy of the call letter from Madurai Zonal Office for interview of messenger post—V. Muralikannan.	M3	27-10-88	Xerox copy of the settlement.
W16	06-03-97	Xerox copy of the call letter from Madurai Zonal Office for interview of messenger post—K. Subburaj	M4	09-01-91	Xerox copy of the settlement.
W17	06-03-97	Xerox copy of the call letter from Madurai Zonal Office for interview of messenger post—J. Velmurugan.	M5	30-07-96	Xerox copy of the settlement.
W18	17-03-97	Xerox copy of the service particulars—J. Velmurugan.	M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
			M7	28-05-91	Xerox copy of the order in W.P. No. 7872/91.
			M8	15-05-98	Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa.
			M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
			M10	Nil	Xerox copy of the wait list of Chennai Module.
			M11	25-10-99	Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 26 जुलाई, 2007

का. आ. 2338.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 268/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-7-2007 को प्राप्त हुआ था।

[सं. एल-12012/453/1998-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 26th July, 2007

S. O. 2338.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 268/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, which was received by the Central Government on 26-7-2007.

[No. L-12012/453/1998-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

K. Jayaraman, Presiding Officer

INDUSTRIAL DISPUTE NO. 268/2004

(Principal Labour Court CGID No. 212/99)

[In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

BETWEEN

Sri B. Gunabalan : I Party/Petitioner

AND

The Assistant General Manager,
State Bank of India, Z.O.
Chennai : II Party/Management

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative

For the Management : M/s. K. S. Sundar, Advocates

AWARD

The Central Government, Ministry of Labour vide Order No. L-12012/453/98-IR(B-I) dated 11-3-1999 has

referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 212/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 268/2004.

2. The Schedule mentioned in that order is as follows:—

“Whether the demand of the workman Shri B. Gunabalan, wait list No. 426 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis as Kodambakkam branch from 30-8-1982. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Kodambakkam branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 30-8-1982, the Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working on temporary basis in Guindy branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the

branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G and 25H of the I. D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I. D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in

seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-7-88, 7-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I. D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 426 in waitlist of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 426, he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has

no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W. P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

- (i) "Whether the demand of the Petitioner in Wait List No. 426 for restoring the wait list of temporary messengers in the Respondent/Bank

and consequential appointment thereupon as temporary messenger is justified ?"

- (ii) "To what relief the Petitioner is entitled ?"

Point No. 1 :

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much

applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB and IC 2248 Central Bank of India Vs. S. Satyam and Others the Supreme Court has held that Chapter V-A of the I. D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B and C' is quite opposed to the doctrine of 'last come-first go' or 'first come-last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared

on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 and W. P. No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Articles 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 and 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No. 11932/91 and W. P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal Clause 2(o) of the I. D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though

the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H. D. Singh Vs. Reserve Bank of India and Others wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though Clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 and W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is

illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I. D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I. Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc.". It is further argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned Senior Counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I. D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation

were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 1 LLJ 323 Associated Glass Industries Ltd. Vs. Industrial Tribunal A.P. and Others wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 11 LLJ 1189 Ashok and Others Vs. Maharashtra State Transport Corporation and Others wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 11 LLJ 308 K.C.P. Ltd. Vs. Presiding Officer and Others wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 National Engineering Industries Ltd. Vs. State of Rajasthan and Others wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or

concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 Secretary, Kollam Jilla Hotel and Shop Workers Union Vs. Industrial Tribunal, Kollam wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 Van Sagnathan Orient Paper Mills Vs. Industrial Tribunal & Ors. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. Sambanthan Vs. Presiding Officer, Labour Court, Madras, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the

order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in *Express Newspapers P. Ltd.* case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 *Union of India and Others Vs. K. V. Vijesh* wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy". In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 *Syndicate Bank & Ors. Vs. Shankar Paul and Others* wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any

right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 *Shankarsan Dash Vs. Union of India* wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 *State of Haryana and Ors. Vs. Piara Singh and Others* wherein the Supreme Court has held that "now coming to the direction that all those ad hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of an without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and

unsustainable". Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 *Ashwani Kumar and Others Vs. State of Bihar and Others* wherein the full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 *Himanshu Kumar Vidyarthi & Ors. Vs. State of Bihar and Ors.* wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come—first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Anyhow, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 *Secretary, State of Karnataka Vs. Uma Devi*, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his

appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. it has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 *National Fertilizers Ltd. and Others Vs. Somvir Singh*, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 *Municipal Council, Sujampur Vs. Surinder Kumar*, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 *Madhya Pradesh State Agro Industries Development Corporation Vs. S.C. Pandey* wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decision, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled ?

20. In view of my foregoing findings that the petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :

For the Petitioner : WW1 Sri B. Gunabalan
WW2 Sri V. S. Ekambaram
For the Respondent : MW1 Sri C. Mariappan
MW2 Sri C. Ramalingam

Documents Marked :

Ex. No.	Date	Description
W1	01-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W2	20-04-88	Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1.
W3	24-04-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.
W4	01-05-91	Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4.
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers.
W6	15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messengers posts.
W7	25-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.
W9	20-02-85	Xerox copy of the service certificate issued by Kodambakkam Branch.

Ex. No.	Date	Description
W10	23-05-95	Xerox copy of the service certificate issued by Saidapet branch.
W11	27-01-97	Xerox copy of the service certificate issued by Saidapet branch.
W12	06-02-97	Xerox copy of the service certificate issued by Park Town branch.
W13	Nil	Xerox copy of the Administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding appointment of temporary employees.
W14	Nil	Xerox copy of the Reference book on Staff matters Vol. III consolidated upto 31-12-95.
W15	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan.
W16	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj.
W17	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan.
W18	17-03-97	Xerox copy of the service particulars—J. Velmurugan.
W19	26-03-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi.
W20	31-03-97	Xerox copy of the appointment order to Sri G. Pandi.
W21	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February 2005 wait list No. 395 of Madurai Circle.
W22	13-02-95	Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list.
W23	09-11-92	Xerox copy of the Head Office Circular No. 28 regarding norms for sanction of messenger staff.
W24	09-07-92	Xerox copy of the minutes of the Bipartite meeting.
W25	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India State Bank of India Staff Federation for implementation of norms—creation of part time general attendants.
W26	07-02-06	Xerox copy of the local Head Office circular about conversion of part time employees and redesignate them as general attendants.
W27	31-12-85	Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre.

For the Respondent/Management :

Ex. No.	Date	Description
M1	17-11-87	Xerox copy of the settlement.
M2	16-07-88	Xerox copy of the settlement.
M3	27-10-88	Xerox copy of the settlement.
M4	09-01-91	Xerox copy of the settlement.
M5	30-07-96	Xerox copy of the settlement.
M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
M7	28-05-91	Xerox copy of the order in W.P. No. 7872/91.
M8	15-05-98	Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa.
M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M10	Nil	Xerox copy of the wait list of Chennai Module.
M11	25-10-99	Xerox copy of the order passed in CMP No. 16289 & 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 26 जुलाई, 2007

का. आ. 2339. — औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 283/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-7-2007 को प्राप्त हुआ था।

[सं. एल-12012/678/1998-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 26th July, 2007

S.O. 2339.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 283/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, which was received by the Central Government on 26-7-2007.

[No. L-12012/678/1998-IR (B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**

Wednesday, the 31st January, 2007

PRESENT

K. Jayaraman, Presiding Officer

INDUSTRIAL DISPUTE NO. 283/2004

(Principal Labour Court CGID No. 307/99)

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

BETWEEN

Sri M. Devan : I Party/Petitioner

AND

The Assistant General : II Party/Management
Manager,
State Bank of India,
Zonal Office,
Chennai

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative

For the Management : M/s. K. S. Sundar, Advocates

AWARD

The Central Government, Ministry of Labour vide Order No. L-12012/678/98-IR(B-I) dated 3-5-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 307/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I. D. No. 283/2004.

2. The Schedule mentioned in that order is as follows :—

“Whether the demand of the workman Shri M. Devan, wait list No. 618 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Walajapet branch from 9-9-1980. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a

copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of that branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 9-9-1980, the Petitioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in Ranipet branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G and 25H of the I. D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding

grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I. D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-7-88, 7-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I. D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 648 in wait list of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service

in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 648, he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank

deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W. P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

- (i) "Whether the demand of the Petitioner in Wait List No. 618 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is entitled?"

Point No. 1 :

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed

for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB and IC 2248 Central Bank of India Vs. S. Satyam and Others the Supreme Court has held that Chapter V-A of the I. D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B and C' is quite opposed to the doctrine of 'last come-first go' or 'first come-last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters,

copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W. P. No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wages in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 and 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per

instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No. 11932/91 and W. P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these Petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2(oo) of the I. D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H. D. Singh Vs. Reserve Bank of India and Others wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he was arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/

Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modifications of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 and W. P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I. D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I. Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc.". It is further argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also

not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned Senior Counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I. D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 Associated Glass Industries Ltd. Vs. Industrial Tribunal A.P. and Others wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 Ashok and Others Vs. Maharashtra State Transport Corporation and Others wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud

or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 ILLJ 308 K.C.P. Ltd. Vs. Presiding Officer and Others wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 National Engineering Industries Ltd. Vs. State of Rajasthan and Others wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive

in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 Secretary, Kollam Jilla Hotel and Shop Workers Union Vs. Industrial Tribunal, Kollam wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 Van Sagnathan Orient Paper Mills Vs. Industrial Tribunal & Ors. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. Sambanthan Vs. Presiding Officer, Labour Court, Madras, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 *Union of India and Others Vs. K. V. Vijeesh* wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy. In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 *Syndicate Bank & Ors. Vs. Shankar Paul and Others* wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 *Shankarsan Dash Vs. Union of India* wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 *State of Haryana and Ors. Vs. Piara Singh and Others* wherein the Supreme Court has held that "now coming to the direction that all those ad hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad hoc/temporary employee who has been continued for one year should be regularised even though

(a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of an without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 *Ashwani Kumar and Others Vs. State of Bihar and Others* wherein the full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 *Himanshu Kumar Vidyarthi & Ors. Vs. State of Bihar and Ors.* wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of

retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come—first go' is not mandatory but only directory. on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Anyhow, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 Secretary, State of Karnataka Vs. Uma Devi, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. it has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 National Fertilizers Ltd. and

Others Vs. Somvir Singh, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 Municipal Council, Sujampur Vs. Surinder Kumar, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 Madhya Pradesh State Agro Industries Development Corporation Vs. S.C. Pandey wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decision, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and

since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled ?

20. In view of my foregoing findings that the petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :

For the Petitioner : WW1 Sri M. Devan
WW2 Sri V. S. Ekambaram
For the Respondent : MW1 Sri C. Mariappan
MW2 Sri C. Ramalingam

Documents Marked :

Ex. No.	Date	Description
W1	01-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W2	20-04-88	Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1.

Ex. No.	Date	Description
W3	24-04-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.
W4	01-05-91	Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4.
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers.
W6	15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messengers posts.
W7	25-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.
W9	05-11-96	Xerox copy of the service certificate issued by Ranipet branch.
W10	27-01-97	Xerox copy of the service certificate issued by Arakonam branch.
W11	03-09-97	Xerox copy of the service certificate issued by Ranipet branch.
W12	13-09-97	Xerox copy of the service certificate issued by Walajapet branch.
W13	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding appointment of temporary employees.
W14	Nil	Xerox copy of the Reference book on staff matters Vol. III consolidated upto 31-12-95.
W15	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan.
W16	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj.
W17	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan.
W18	17-03-97	Xerox copy of the service particulars—J. Velmurugan.
W19	26-03-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi.

W20	31-03-97	Xerox copy of the appointment order to Sri G. Pandi.
W21	Feb. 2005	Xerox copy of the pay slip of T Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle.
W22	13-02-95	Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list.
W23	09-11-92	Xerox copy of the Head Office Circular No. 28 regarding norms for sanction of messenger staff.
W24	09-07-92	Xerox copy of the minutes of the Bipartite meeting.
W25	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India State Bank of India Staff Federation for implementation of norms—creation of part time general attendants.
W26	07-02-06	Xerox copy of the local Head Office circular about conversion of part time employees and redesignate them as general attendants.
W27	31-12-85	Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre.

For the Respondent/Management :

Ex. No.	Date	Description
M1	17-11-87	Xerox copy of the settlement.
M2	16-07-88	Xerox copy of the settlement.
M3	27-10-88	Xerox copy of the settlement.
M4	09-01-91	Xerox copy of the settlement.
M5	30-07-96	Xerox copy of the settlement.
M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
M7	28-05-91	Xerox copy of the order in W.P. No. 7872/91.
M8	15-05-98	Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa.
M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M10	Nil	Xerox copy of the wait list of Chennai Module.
M11	25-10-99	Xerox copy of the order passed in CMP No. 16289 & 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 26 जुलाई, 2007

का. आ. 2340.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इण्डियन इन्स्टिट्यूट ऑफ पल्सेस् रिसर्च के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 179, 166, 180, 181, 183, 182, 162, 156, 178, 154, 152, 153/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-7-2007 को प्राप्त हुआ था।

[सं. एल-42012/261, 262, 250, 251, 254, 260, 265
253, 259, 247, 249, 264/98-आई आर (डी. यू.)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 26th July, 2007

S. O. 2340.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 179, 166, 180, 181, 183, 182, 162, 156, 178, 154, 152, 153/99) Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Indian Institute of Pulses Research and their workman, which was received by the Central Government on 26-7-2007.

[No. L-42012/261, 262, 250, 251, 254, 260, 265, 253,
259, 247, 249, 264/98-IR (DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

**BEFORE SHRI R. G. SHUKLA, PRESIDING
OFFICER, CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHRAM
BHAWAN, A. T. I. CAMPUS, UDYOG NAGAR,
KANPUR, U. P.**

Industrial Dispute Case Nos. 179/99 Ganga Ram
166/99 Ram Chandra
180/99 Anil Pandey
181/99 Jagdish
183/99 Roshan Ali
182/99 Chammi Lal
162/99 Uma Shanker
156/99 Vinod
178/99 Suresh Kumar
154/99 Rukhmani
152/99 Kamlesh
153/99 Harish Chandra
All Care of Sri Rajendera
Pd. Shukla, 115/193-A-2
Maswanpur, Kanpur

AND

The Director,
Indian Institute of Pulses Research,
Kalyanpur, G. T. Road,
Kanpur.

AWARD

Central Government, Ministry of Labour, New Delhi.
vide notification nos. :

1. L-42012/261/98. I. R. D. U. dated 3-5-99 has referred the following dispute :

Whether the action of the management of the Director, Indian Institute of Pulses Research, Kanpur, in terminating the services of Sri Sunil alias Gangaram is legal and justified ? If not, to what relief the workman is entitled ?

2. L-42012/262/98. I. R. D. U. dated 3-5-99 has referred the following dispute :

Whether the action of the Director, Indian Institute of Pulses Research, Kalyanpur, Kanpur, in terminating the services of Sri Ram Chandra is legal and justified ? If not, to what relief the workman is entitled ?

3. L-42012/250/98. I. R. D. U. dated 3-5-99 has referred the following dispute :

Whether the action of the Director, Indian Institute of Pulses Research, Kalyanpur, Kanpur, in terminating the services of Sri Anil Pandey is legal and justified ? If not, to what relief the workman is entitled ?

4. L-42012/251/98. I. R. D. U. dated 3-5-99 has referred :

Whether the action of the Director, Indian Institute of Pulses Research, Kalyanpur, Kanpur, in terminating the services of Sri Jagdish is legal and justified ? If not, to what relief the workman is entitled ?

5. L-42012/254/98. I. R. D. U. dated 3-5-99 has referred :

Whether the action of the Director, Indian Institute of Pulses Research, Kalyanpur, Kanpur, in terminating the services of Sri Roshan Ali is legal and justified ? If not, to what relief the workman is entitled ?

6. L-42012/260/98. I. R. D. U. dated 3-5-99 has referred :

Whether the action of the Director, Indian Institute of Pulses Research, Kalyanpur, Kanpur, in terminating the services of Sri Chammi Lal is legal and justified ? If not, to what relief the workman is entitled ?

7. L-42012/265/98. I. R. D. U. dated 3-5-99 has referred :

Whether the action of the Director, Indian Institute of Pulses Research, Kalyanpur, Kanpur, in terminating the services of Sri Uma Shankar is legal and justified ? If not, to what relief the workman is entitled ?

8. L-42012/253/98. I. R. D. U. dated 3-5-99 has referred :

Whether the action of the Director, Indian Institute of Pulses Research, Kalyanpur, Kanpur, in terminating the services of Sri Vinod is legal and justified ? If not, to what relief the workman is entitled ?

9. L-42012/259/98. I. R. D. U. dated 3-5-99 has referred :

Whether the action of the Director, Indian Institute of Pulses Research, Kalyanpur, Kanpur, in terminating the services of Sri Suresh Kumar is legal and justified ? If not, to what relief the workman is entitled ?

10. L-42012/247/98. I. R. D. U. dated 26-4-99 has referred the following dispute :

Whether the action of the Director, Indian Institute of Pulses Research, Kalyanpur, Kanpur, in terminating the services of Smt. Rukhmani is legal and justified ? If not, to what relief the workman is entitled ?

11. L-42012/249/98. I. R. D. U. dated 3-5-99 has referred :

Whether the action of the Director, Indian Institute of Pulses Research, Kalyanpur, Kanpur, in terminating the services of Sri Kamlesh is legal and justified ? If not, to what relief the workman is entitled ?

12. L-42012/264/98. I. R. D. U. dated 3-5-99 has referred :

Whether the action of the management of Director, Indian Institute of Pulses Research, Kalyanpur, Kanpur, in terminating the services of Sri Harish Chandra is legal and justified ? If not, to what relief the concerned workman is entitled ?

13. As in all the above noted industrial dispute cases nos. a common question of fact and law is involved hence it has proposed to dispose of them by means of a common award and for the purposes all the above cases have been consolidated by means of order dated 11-4-2001 and I. D. Case No. 179 of 99 was made the leading cases in which parties to the dispute has recorded their documentary and oral evidence.

14. After exchange of pleadings and evidence of the parties were concluded arguments were heard. When the case was taken up for recording of award it transpired from the perusal of the reference order of each of the connected cases that in the schedule of reference order date of termination of the service of the respective workman has not been mentioned. Therefore it will be unnecessary to give full facts of the case and discuss the evidence led by the parties as in the event tribunal arriving at a conclusion that the termination of each of the workman is neither legal nor justified in that event a normal question which arises for consideration at the hands is that as to from what date each workman should be directed to be reinstated in the services of the management. It is settled principle of law that in the absence of mention of the date of termination of the service either in the reference order or in the pleadings of the parties no direction of reinstatement can be passed. From this point of view schedule of reference order appears to be vague and meaningless and cannot be answered and also that on the basis of such vague schedule of reference no workman involved in the above cases can be granted any kind of relief as has been claimed by them in their pleadings.

15. Accordingly in view of what has been discussed above, it is held that the workman cannot be held entitled for any relief mainly for the reasons that there is no mention of date of termination of each of workman in schedule of reference order referred to this Tribunal. Moreover, Industrial Tribunal/Labour Court are not empowered either to enlarge the scope of reference order nor the same can be reduced in view of provisions of Sub-sec. (4) of Section 10 of Industrial Disputes Act, 1947. Reference as such is answered against the workmen holding that they are not entitled for any relief as claimed by each of workmen involved in the Award. Therefore, reference is answered accordingly. It is further ordered that a copy of this award be placed on each of the connected file.

R. G. SHUKLA, Presiding Officer

नई दिल्ली, 26 जुलाई, 2007

का. आ. 2341.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डायरेक्टर, डी. एल. आर. एल., हैदराबाद के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/ग्राम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या एल. सी. आई. डी.-136/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-7-2007 को प्राप्त हुआ था।

[सं. एल-14025/3/2007-आई आर (डी. यू.)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 26th July, 2007

S. O. 2341.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. LCID 136/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Director, DLRL, Hyderabad and their workmen, which was received by the Central Government on 26-7-2007.

[No. L-14025/3/2007-IR (DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

PRESENT

Shri T. Ramachandra Reddy, Presiding Officer

Dated the 11th day of July, 2007

L. C. I. D. No. 136/2004

BETWEEN

Sri C. Anand Kumar,
S/o Satyanarayana,
R/o H. No. 20-1-625,
Shivanagar Quarters,
Pooranaphool,
Hyderabad.

... Petitioner

AND

The Director,
DLRL, Chandrayangutta,
Hyderabad.

.. Respondent

APPEARANCES

For the Petitioner : Sri Balraj, Advocate.

For the Respondent : Sri P. Raveender Reddy,
Advocate.

AWARD

This is an application filed by the Petitioner Sri C. Anand Kumar under Sec. 2A(2) of Industrial Disputes Act, 1947 seeking the relief of reinstatement into the service with full back wages with all attendant benefits against the Respondent who is the Director of DLRL, Chandrayangutta, Hyderabad.

2. This case was taken in view of the judgment of the Hon'ble High Court of Andhra Pradesh reported in 1997 (3) LLJ Supplement, page 1141 in W. P. No. 8395 of 1989 dated 3-8-1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others.

3. That the Petitioner submitted that he was appointed as a casual labour in the Respondent organization on 6-9-99 and that he discharged his duties honestly to the satisfaction till he was orally terminated w.e.f. 25-11-2003. He further stated that he was paid his first salary Rs. 962.50 paise per month and the Respondent has not implemented minimum wages, Provident Fund, ESI or other facilities and the Petitioner is physically handicapped person belonging to Scheduled Caste community. The Management bore grudge against the Petitioner and orally terminated his services.

4. The Respondent filed counter affidavit and denied the averments made by the Petitioner. It is submitted that as per the general instructions issued by the Government, casual workers on daily wages basis are required to be engaged through employment exchange. It is further submitted that where there is a requirement of labour to a piece of work which is not perennial in nature it will be given to one person with a fixed amount who comes to the main gate of the laboratory, that person will complete the package of work by engaging workers who come to the main gate. It is further submitted that the Petitioner was never appointed or engaged as a casual labour and the question of oral termination does not arise and the Respondent have no knowledge about the names and number of labour engaged by the person to complete the given package of the work.

5. The Petitioner examined himself as WW1 and got marked copies of the documents Ex. W1 to W4. Ex. W1 is the demand notice dated 24-5-2004. Ex. W2 is the postal receipt of Ex. W1. Ex. W3 is the receipt under certificate of posting dated 24-5-2004. Ex. W4 is the postal acknowledgment.

6. As against this evidence the Respondent filed the evidence affidavit of Sri P. Satish Singh, Civilian Assistant Security Officer of the Respondent organisation and reiterated the averments made in the counter affidavit.

7. The Learned Counsel for the Petitioner contended that the Petitioner was engaged as a casual labour for about three years continuously and that he was orally terminated in violation of Sec. 25F of Industrial Disputes Act, 1947 without giving any prior notice.

8. On the other hand, the Learned Counsel for the Respondent contended that the Petitioner was never engaged as a casual labour in their Department and no document was filed by the Petitioner to prove that he was engaged by the Respondent. Further contended that when there is any work arises which is not perennial in nature it will be entrusted to a person under a package who will engage labourers for completion of work and Respondent has no knowledge about the names and number of workers engaged by such persons.

9. The burden lies on the Petitioner to prove that he was engaged by the Respondent organization for more than 240 days continuously in a calendar year and the Provisions of Evidence Act will not apply to the proceedings as held by the Apex Court in 2006(1) SCC page 106 between R. M. Yellatti and Asstt. Executive Engineer at para 17 as follows : "Analysing the above decisions of this Court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under Section 10 of Industrial Disputes Act. However, applying general principles and on reading the aforesaid judgments, we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In case of termination of services of daily-waged earners, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (the claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register, etc. Drawing of adverse inference ultimately would depend thereafter on the facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be ground for the Tribunal to draw an adverse inference against the Management. Lastly, the above judgements lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with concurrent findings of fact recorded by the Labour Court unless they are perverse. This exercise will depend upon the facts of each case."

10. In the present case the Petitioner claims that he was given appointment letter by the Respondent in the year 1999 and that he stated in the cross examination that he has handed over that letter to his advocate and the

same was filed. But in fact, no appointment letter was filed by the Petitioner. Petitioner has filed only a representation Ex. W1. The Petitioner claims that he has worked for more than 240 days, but he did not file any record to that effect. If really the Petitioner was given an appointment letter nothing prevented him in submitting the same. Similarly, the Petitioner did not adduce any evidence to show that he continuously worked for more than 240 days in a calendar year. The Learned Counsel for the Petitioner relied on the Judgement 2006(1) ALD page 201 Md. Hyder and Others Vs. Industrial Tribunal-II, Hyderabad and Another, which is not applicable to the facts of the present case. Petitioner could not establish that he was engaged by the Respondent and that the Respondent terminated him in violation of Sec. 25F of Industrial Disputes Act, 1947.

11. Even resuming that Petitioner was engaged as a daily wage for 240 days he will not get any legal right unless he is appointed in a duly sanctioned vacant post and upon following the statutory law operating in the field as held by the Apex Court in 2006(2) SCC page 702, M. P. Housing Board and Another Vs. Manoj Shrivastava at para 17 as follows : "It is now settled that only because a person had been working for more than 240 days, he does not derive any legal right to be regularized in service."

12. On considering the material on record I hold that the Petitioner will not get any right for reinstatement and the Petition is dismissed and award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 11th day of July, 2007.

T. RAMACHANDRA REDDY, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1 : Sri C. Ananda Kumar	MW1 : Sri B. Satish Singh

Documents marked for the Petitioner

- Ex. W1 : Copy of demand notice dated 24-5-2004
- Ex. W2 : Copy of postal receipt dt. 24-5-2004
- Ex. W3 : Copy of receipt regarding certificate of posting dt. 24-5-2004
- Ex. W4 : Copy of postal acknowledgement dt. 24-5-2004

Documents marked for the Respondent

- Ex. M1 : Authorisation letter to depose in this case dt. 25-7-2006

नई दिल्ली, 26 जुलाई, 2007

का. आ. 2342. — औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी. एस. आर. टी. आई. के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक

अधिकरण, बंगलौर के पंचाट (संदर्भ संख्या 43/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-7-2007 को प्राप्त हुआ था।

[सं. एल-42012/205/2003-आई आर (सीएम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 26th July, 2007

S. O. 2342—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 43/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the Industrial Dispute between the management of CSRTI (CSB) (Central Sericultural Research) and their workmen, which was received by the Central Government on 26-7-2007.

[No. L-42012/205/2003-IR (CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated the 2nd July, 2007

PRESENT

Shri A. R. Siddiqui, Presiding Officer

C. R. No. 43/2004

I PARTY :

Shri S. Nagaraju,
S/o Shri Siddappa,
D. No. 2379/1, Kantharaja Urs,
Cross Road, Koppal,
Mysore-570014

II PARTY :

The Director,
CSRTI (CSB) (Central Sericultural Research and
Training Institute),
Manadavadi Road,
Srirampura, Mysore,
Mysore-570008

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of Sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide order No. L-42012/205/2003-IR (CM-II) dated 29th July, 2004 for adjudication on the following schedule :

SCHEDULE

"Whether the management of Central Sericultural Research and Training Institute in dismissing Shri S. Nagaraju, Time Scale Farm Worker, from services in the year 2002 is legal and justified? If not, to what relief is the workman entitled?"

2. The case of the first party workman, as made out in the Claim Statement, is that after being appointed as a Casual Labour in pursuance to the interview held on 10-4-1984 he was issued appointment order dated 1-11-1992 and was discharging his duties to the satisfaction of the second party/management; that since the management did not confirm his appointment either in 'C' group or 'D' group, he approached the Hon'ble High Court in Writ Petition No. 4519/90 and Hon'ble High Court by judgment dated 30-8-1996 directed the management to regularize his services within six months from the date of the said judgment and the management by their letter dated 20-3-1997 regularised his services in 'D' Group; that by memorandum dated 12-12-2001 he was served with a show cause notice for his alleged unauthorised absence from 6-4-2001 and he gave his reply saying that at no point of time he was unauthorisedly absent from duty. The management suppressing his above said reply issued another notice dated 21-3-2002 and thereafter another show cause notice dated 18-4-2002 followed by the articles of charges and then proposed domestic enquiry against him giving the date of enquiry as 2-7-2002. In the meanwhile, the enquiry officer obtained signature of the first party on some blank papers and told him that he was exonerated from the charges leveled against him. However, vide order dated 22-10-2002, they imposed the punishment of dismissal. He further contended that the so called enquiry conducted against him was not in accordance with the provisions of law and the principles of natural justice and therefore, the enquiry is not sustainable in the eye of law and in the result, the order of dismissal passed against him is illegal and unjustified. Therefore, he raised the dispute before the conciliation officer, which resulted into the present reference proceedings. He requested this tribunal to reinstate him in service with all benefits granting him compensation of Rs. 10,000 towards the mental agony suffered by him and a sum of Rs. 5,000 towards the costs of the proceedings.

3. The management while resisting the claim of the first party, by way of Counter Statement contended that the first party was interviewed on 10-4-1984 and was appointed on 9-1-1985 as a Casual Labourer purely on temporary basis. He reported for duty on 11-1-1985. He was very much irregular to the duties remaining absent from duty frequently without prior permission and did not improve his conduct despite number of memos issued to him. In the meanwhile, the first party approached the Hon'ble High Court seeking regularisation of his services by way of Writ Petition and that was disposed of on 20-8-1990 with a direction to the management to consider the case of the first party for regularisation of his services in group 'D' post within six months. The first party as per the directions of the Hon'ble High Court again was engaged as a casual labourer there being no avenue for promotion for Group 'C' or 'D' posts as those posts were to be filled only through Employment Exchange after conducting interview etc. The management contended that once again the first party was not regular in his attendance and remained absent from duty unauthorisedly from 2-3-1993 to 13-2-1994. An enquiry was initiated against him and on

the basis of the enquiry findings holding him guilty of the charges. the management vide memorandum dated 4-1-1996 imposed the penalty of withholding to two increments with cumulative effect on the first party with a warning to him not to repeat such misconduct once again; that the first party failed to report for duty and was served with the memorandum dated 4-1-1996, he issued a letter dated 16-6-1997 accepting the terms and conditions and reported for duty on 23-6-1997. This being the case, the first party again unauthorisedly remained absent from work from May 2001 without any prior intimation. He was served with memorandum dated 12-12-2001 and 21-3-2002 to report for duty but failed to act upon it. Thereupon, the management issued articles of charge along with memorandum dated 18-4-2002 and during the course of enquiry the first party admitted the charges leveled against him in toto. He was furnished with the enquiry report along with the second show cause notice and gave his reply once again admitting the charges. Therefore, since the first party admitted the guilt, he was dismissed from service by the impugned punishment order dated 10-6-2003; that the first party raised the conciliation before the Assistant Labour Commissioner (Central) requesting the management to grant retirement benefits including the amount of gratuity by considering his case as a special case. The ALC recommended the appellate authority of the management to consider the request of the first party and on the basis of the recommendation made by him, the management while considering the request of the first party on humanitarian ground paid a sum of Rs. 22,394 vide cheque dated 26-7-2003, taking into consideration his qualified continuous service of 10 years out of 17 years of total service and the said amount was paid as full and final settlement of his retirement benefits acknowledged by the first party on the very same day. Therefore, now it is not open for the first party to contend that he was illegally dismissed from service. Therefore, the management requested this tribunal to reject the reference.

4. Keeping in view the respective contentions of the parties with regard to the validity and fairness or otherwise of the enquiry proceedings, this tribunal on 1-7-2005 framed the following preliminary issue :

"Whether the Domestic enquiry conducted against the first party by the second party is fair and proper?"

5. The management on the said issue examined the enquiry officer as MW1 and got marked six documents at Ex. M1 to M6. First party did not choose either to examine himself or lead evidence on his behalf. When the matter was posted for arguments on this issue on 2-1-2007 neither party appeared before the court and therefore, it was taken as heard and by order dated 16-1-2007 the above said issue was answered in favour of the management holding that the enquiry held against the first party by the second party is fair and proper. Thereupon, case came to be posted to hear arguments on merits. On 9-2-2007, learned counsel Shri TSR for Shri NSN for management put forth his arguments and the matter came to be posted for arguments to be advanced on behalf of the first party. On 14-3-2007,

22-4-2007, 10-5-2007 and 13-6-2007 the first party and his counsel remained absent and hearing the learned counsel for the management once again case is posted this day for award. Now, therefore, in the light of the finding recorded by this tribunal on the preliminary issue to the effect that the Domestic Enquiry conducted against the first party by the second party was fair and proper, the only point to be considered by this tribunal was whether the findings of the enquiry officer suffered from perversity and if not, the punishment of dismissal passed against the first party was proportionate to the gravity of the misconduct committed by him.

6. As noted above, learned counsel for the first party did not turn up to argue the matter on merits and whereas, the learned counsel representing the management while supporting the findings of the enquiry officer submitted that the first party admitted the guilt during the course of enquiry and therefore, accordingly, the enquiry officer submitted his findings and on the basis of his findings the first party was dismissed from service. He submitted that keeping in view the conduct of the first party remaining absent from duty frequently on number of occasions and since he did not mend his conduct despite several opportunities given to him to improve his conduct, there was no alternative for the management except to get rid of his services and therefore, punishment of dismissal was proper. He also contended that when the first party approached the conciliation officer seeking directions against the management to pay him retirement benefits, on the recommendation of the conciliation officer, the management on humanitarian grounds paid him a sum of Rs. 22,000 and odd in lieu of retirement benefits which amount the first party received by way of full and final settlement of his claim against the management and therefore, now, he cannot maintain the present dispute. On going through the proceedings dated 12-7-2002, the letter submitted by the first party during the course of enquiry and the enquiry report marked before this tribunal at Ex. M4 to M6 respectively, it can be very well gathered that the first party during the course of enquiry, in no uncertain, terms admitted the guilt of misconduct, namely, his unauthorised absence from duty as alleged in the articles of charges issued against him. It is based on the plea of guilt made by the first party, the enquiry officer submitted his findings holding him guilty of the charges and the disciplinary authority by accepting the same passed the impugned punishment order dismissing him from service. As the first party pleaded guilty to the charges, the enquiry officer, it appears did not record any oral evidence and that being the case there is nothing now to appreciate the findings of the enquiry officer with reference to the evidence. In this view of the matter it cannot be said that the enquiry suffered from any perversity.

7. Now, coming to the question of quantum of punishment. Keeping in view the conduct of the first party remaining absent from duty very frequently and in view of the contention of the management that he received retirement benefits during the course of conciliation before the ALC by way of full and final settlement of his claim, the very reference filed by the first party in my opinion does

not sustain in the eye of law and the punishment of dismissal need not be interfered at the hands of this tribunal. In the result, the reference fails and hence the following award :

AWARD

The reference is dismissed. No costs.

(Dictated to PA, transcribed by her, corrected and signed by me on 2nd July 2007).

A. R. SIDDIQUI, Presiding Officer

नई दिल्ली, 26 जुलाई, 2007

का. आ. 2343.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार न्यूक्लियर फ्यूल कॉम्प्लेक्स, डिपार्टमेंट ऑफ एटोमिक एनर्जी के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या एल. सी. आई. डी.-102/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-7-2007 को प्राप्त हुआ था।

[सं. एल-42025/5/2007-आई आर (डी. यू.)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 26th July, 2007

S. O. 2343.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. LCID 102/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Nuclear Fuel Complex, D/o Atomic Energy and their workmen, which was received by the Central Government on 26-7-2007.

[No. L-42025/5/2007-IR (DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

PRESENT

Shri T. Ramachandra Reddy, Presiding Officer

Dated the 13th day of July, 2007

L. C. I. D. No. 102/2002

BETWEEN

Shri E. Srinivas Goud,
S/o Sattaiah Goud,
R/o 1-134, Sahenagar,
Vanasthalipuram,
Rangareddy District.

... Petitioner

AND

The Chief Executive,
(Disciplinary Authority),
The Nuclear Fuel Complex,
Department of Atomic Energy,
Hyderabad.

... Respondent

APPEARANCES

For the Petitioner : M/s. G. Ravi Mohan, R. Devender Reddy, G. Srinivas Reddy and G. Naresh Kumar, Advocates.

For the Respondent : Sri R. S. Murthy, Advocate.

AWARD

This is a petition filed by the Petitioner Sri E. Srinivas Goud against the Respondent Nuclear Fuel Complex, Department of Atomic Energy under Sec. 2A(2) of the Industrial Disputes Act, 1947 seeking the relief of reinstatement by setting aside the removal order dated 5-3-2002 passed by the Respondent with all other attendant benefits and back wages.

2. This case was taken in view of the judgment of the Hon'ble High Court of Andhra Pradesh reported in 1997 (3) LLJ Supplement, page 1141 in W. P. No. 8395 of 1989 dated 3-8-1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others.

3. The Petitioner submitted that he was appointed as a helper (SMP) in the Respondent organization in the year 1983 and promoted to the post of tradesman and nature of his duties are purely technical and that he comes under the definition of workman as he has worked as a chemical operator in SMP Department. It is further submitted that the Respondent is a factory as defined under Sec. 2(H) of Factories Act and also it is an industry as defined under Sec. 2(J) of Industrial Disputes Act, 1947. The Respondent is manufacturing nuclear components and the chemical requirements for Atomic Energy. The Petitioner approached this tribunal as he was removed from service by the Respondent through the proceedings dated 5-3-2002.

4. It is further submitted that the Petitioner was issued with a charge sheet dated 26-8-2000 with the following charges :

"That the said Shri E. Srinivas had married Kum. E. Manga on 12-8-1998 during the subsistence of former marriage and during the life time of his first wife Smt. E. Sujatha. Thus, Shri Srinivas has committed bigamy.

Shri Srinivas is therefore charged for act of misconduct, violative of Rule 21 of CCS (Conduct) Rules, 1964."

ARTICLE-II

"That the said Shri E. Srinivas has requested vide his letter dated 4-5-95 for inclusion of name of Baby E. Shilpa as his daughter in his family Identity Card. However, Shri Srinivas has submitted an affidavit dated 10-8-98 to the Executive Officer, Shri Ramalingeshwara Swamy Devasthanam, Keesaragutta stating that he had no children through his first wife Smt. Sujatha and with her consent he

is marrying Kum. Manga at Sri Ramalingeshwara Swamy Devasthanam, Keesaragutta on 12-8-98.

From the above, it is seen that Shri Srinivas has submitted a fictitious birth certificate for inclusion of the name of Baby Shilpa as his child in the records to gain monetary benefits and thereby exhibited lack of integrity.

Shri Srinivas is, therefore, charged for act of misconduct, violative of Rule 3(1) of CCS (Conduct) Rules, 1964."

5. The Respondent appointed Enquiry Officer in spite of giving explanation denying the charges and conducted enquiry to the charges. The Enquiry Officer concluded that both the charges proved even though there is no legal evidence. The Respondent basing on the enquiry report has issued show cause notice for removal and accordingly removed. The Petitioner preferred an appeal against the removal order before Appellate Authority.

6. It is further submitted that the Petitioner admitted the facts of second marriage between him and Kum. E. Manga with the consent of his first wife Smt. Sujatha for the creation of children and that his wife also witnesses the ceremony. It is further submitted that the charges of bigamy cannot be taken cognizance, unless his first wife Smt. Sujatha gives a complaint. The Respondent has not produced any witnesses before the Enquiry Officer and the Petitioner was not given an opportunity to cross examine them and the preliminary enquiry was conducted on the back of the Petitioner and the witnesses examined during the preliminary enquiry were not produced and in fact, the complainant Smt. E. Manga who is the second wife was not examined by the Enquiry Officer.

7. It is further submitted that in respect of the second charge the letter dated 4-5-95 given by him requesting the authorities for inclusion of the name of Baby E. Shilpa as his daughter in his family identity card can either be rejected or accepted by the Respondent. As such, the said charge is misconceived. It is further submitted that his second wife filed a criminal case against him under Sec. 494, 498A and 307 I. P. C. on the file of III Addl. Sr. Sessions Judge in S. C. No. 220/2001. In view of the pendency of the said criminal case, the Departmental Enquiry is premature.

8. The Respondent filed counter affidavit sworn by Sri G. Koteswara Rao, Administrative Officer and denied the allegations made in the petition. It is submitted that a petition can not be maintainable since the Petitioner hold a civil post in government and was governed by FR and SR and other civil service rules and regulations. It is further submitted that the Petitioner has not exhausted the departmental remedies and the appeal preferred by the Petitioner is pending. Petitioner has to approach only Hon'ble Central Administrative Tribunal and not under the Industrial Disputes Act, 1947. It is further submitted that the Petitioner while working as Tradesman/C, when married Kum. Manga under Hindu customs and traditions on 12-8-98 during the subsistence of the former marriage and during the life time of his first wife Smt. Sujatha. He did not get divorce from his first wife from a competent Court of Law. As such, the Petitioner has violated conduct rule

21 of CCS (Conduct) Rules, 1964. Accordingly, he was issued a charge sheet dated 7-2-2001. Subsequently, an Enquiry Officer was appointed after considering the explanation given by the Petitioner. The Enquiry Officer has conducted enquiry into the charges and submitted his report concluding that both the charges against the Petitioner are proved. A copy of the enquiry report was furnished to the Petitioner who submitted an explanation. The Disciplinary Authority after considering the enquiry report and explanation has issued a show cause notice for imposing a penalty of removal from service and accordingly removed. It is further submitted that the Petitioner has categorically admitted that the second marriage was performed with Kum. Manga on 12-8-98 at Sri Ramalingeshwara Swamy Devasthanam, Keesaragutta in presence of his first wife Smt. Sujatha, before the Disciplinary Authority as well as before the Appellate Authority. The Disciplinary Authority has rightly removed the Petitioner. It is further submitted that the Petitioner has approached the Respondent to include his daughter Baby Shilpa as a member of his family in the family identity card even though he filed by submitting a letter dated 4-5-95 but he submitted an affidavit dated 10-8-98 before the Executive Officer Sri Ramalingeshwara Swamy Devasthanam, Keesaragutta stating that he has no children through his first wife Smt. Sujatha and that he is marrying his second wife Kum. Manga on 12-8-98 with the consent of his first wife. As such the letter regarding the name of the alleged daughter is fictitious.

9. The Petitioner filed a memo on 6-7-2004 not disputing the validity of the domestic enquiry.

10. Arguments heard under Sec. 11A.

11. The Learned Counsel for the Petitioner contended that the Petition under Sec. 2A(2) of Industrial Disputes Act, 1947 is maintainable since the nature of duties of the Petitioner are purely technical in nature and the Respondent is an industry under the definition of Industrial Disputes Act, 1947. The Respondent has taken the plea that the Petitioner hold a civil post in the Respondent organization, as such, the provisions of the Industrial Disputes Act, 1947 are not applicable. But the Respondent did not produce any evidence to show that how the petition is not maintainable and post held by the Petitioner is a civil post. The designation of the Petitioner shows that the nature of duties are technical and it comes under the definition of workman. In view of the judgment of the Hon'ble High Court of Andhra Pradesh reported in 1997 (3) LLJ Supplement, page 1141 in W. P. No. 8395 of 1989 dated 3-8-1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others, this tribunal has entertained the petition under Sec. 2A(2) under the State Amendment.

12. The Learned Counsel for the Respondent contended that the Enquiry Officer has wrongly concluded that the Petitioner has committed bigamy even though the first wife has not complained. The appeal preferred by the Petitioner before the Appellate Authority was disposed of on 17-12-2002 confirming the removal order passed by the Disciplinary Authority.

13. It is not in dispute that Petitioner has admitted before the Enquiry Officer that he married Kum. Manga on 12-8-98 with the knowledge and consent of his first wife as his first wife has not conceived. It is also not disputed that he filed an affidavit before the Executive Officer, Sri Ramalingeswara Swamy Devasthanam, Keesaragutta about admitting his second marriage during the subsistence of the first marriage. The Petitioner admitted the fact of second marriage in his explanation filed before the Enquiry Officer as well as before the Disciplinary Authority and also in his appeal.

14. It is contended by the Petitioner that since the criminal case filed by his second wife was acquitted, the proceedings under domestic enquiry are not maintainable. It should be noted that the criminal proceedings initiated by the second wife of the Petitioner are entirely different and the acquittal of the Petitioner has no consequence. The proceedings under departmental enquiry can be conducted in spite of the pendency of the criminal proceedings and strict to rules of evidence are not applicable in the departmental proceedings. It should be noted that the Petitioner himself has admitted about his second marriage with Kum. Manga during the subsistence of his first marriage with Smt. Sujatha. The Disciplinary Authority on considering the material on record and the admission made by the Petitioner held that the charges are proved.

15. The Petitioner has pleaded that he made a representation for inclusion of Baby Shilpa as his daughter, i.e., of his first wife's baby, but he changed his version in the enquiry that he adopted the child under a deed. But he did not mention about adoption in his letter dated 4-5-95. Further, the Petitioner has not informed about the adoption of the female child. The affidavit given by him before Sri Ramalingeswara Swamy Devasthanam, Keesaragutta is quite contrary and inconsistent to the letter dated 4-5-95. On considering the material on record, I hold that the misconduct of the Petitioner in performing the second marriage during the subsistence of first marriage is in violation of rule 21 of CCS (Conduct) Rules, 1964 and the Disciplinary Authority has rightly held that the charges against the Petitioner were not proved. The punishment imposed by Disciplinary Authority is in consonance with the gravity of charge and I do not see any sufficient ground to interfere with the punishment. Therefore, the petition is dismissed and award is passed accordingly. Transmit.

(Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 13th day of July, 2007)

T. RAMACHANDRA REDDY, Presiding Officer

Appendix of evidence

Witnesses examined
for the Petitioner

NIL

Witnesses examined
for the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 26 जुलाई, 2007

का. आ. 2344. — औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी. पी. डब्ल्यू. डी. के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या एल. सी. आई. डी.-91/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-7-2007 को प्राप्त हुआ था।

[सं. एल-42025/5/2007-आई आर (डी. यू.)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 26th July, 2007

S. O. 2344.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. LCID 91/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of C. P. W. D. and their workmen, which was received by the Central Government on 26-7-2007.

[No. L-42025/5/2007-IR (DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

PRESENT

Shri T. Ramachandra Reddy, Presiding Officer

Dated the 4th day of July, 2007

L. C. I. D. No. 91/2004

(Old ID No. 96/2001 transferred from Industrial Tribunal-cum-Labour Court, Visakhapatnam)

BETWEEN

Shri D. Pilla Rayudu,
S/o Papanna,
D. No. 8-158, Gudiwada Appanna Colony,
Near B. H. P. V., Mindi Post,
Visakhapatnam-12

... Petitioner

AND

1. The Director General of Works,
C. P. W. D.,
Ministry of Urban Affairs and
Employment,
Government of India,
New Delhi

2. The Superintending Engineer (Ele),
Hyderabad, Central Electrical Circle,
Central P. W. D., Sultan Bazar, Koti,
Hyderabad

3. The Executive Engineer (Civil),
Visakhapatnam Central P. W. D.,
Kharasa,
Visakhapatnam
 4. The Executive,
Electrical Division,
Central P. W. D., Rama Talkies,
Visakhapatnam
- ... Respondent

APPEARANCES

For the Petitioner : M/s. V. V. Ravi Prasad and J. V. Krishna, Advocates

For the Respondent : Sri A. A. Swamy, Advocate

AWARD

This is a case taken under Sec. 2A (2) of the I. D. Act, 1947 by the Industrial Tribunal-cum-Labour Court, Visakhapatnam in view of the judgment of the Hon'ble High Court of Andhra Pradesh reported in W. P. No. 8395 of 1989 dated 3-8-1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others and transferred to this Court in view of the Government of India, Ministry of Labour's Order No. H-11026/1/2001-IR (C-II) dated 18-10-2001 bearing I. D. No. 96/2001 and renumbered in this Court as L. C. I. D. No. 91/2004.

2. This is a petition filed by the Petitioner Sri D. Pilla Rayudu, S/o Papanna against the Respondents under Sec. 2A (2) of the Industrial Disputes Act, 1947 for reinstatement into service with back wages. The Petitioner submits that he belongs to Scheduled Caste and worked with the Respondents Central P. W. D., from 28-2-87 to 15-12-88 on daily wages on peon and subsequently worked for a total period of 5 years completing 240 days in each calendar year. He was orally terminated on 1-10-1992. On apprehending that he will be removed from the service, he has approached Hon'ble Central Administrative Tribunal for regularization. The Respondent has taken the plea before the Hon'ble Central Administrative Tribunal that the Petitioner has impersonated taking advantage of his name and in fact one Dhandangi Pilla Rayudu son of Papanna worked in their organization on temporary basis and the Petitioner's father's name was shown as Mothilal Babji before the Hon'ble Central Administrative Tribunal by mistake. The Respondent taking advantage of that mistake has taken that plea. The Petitioner's Counsel has filed an amendment petition and subsequently the Petitioner's Counsel has not pressed the original application. As such, it was dismissed as not pressed on 30-7-1992 and the amendment petition was also dismissed.

3. It is further submitted that the Petitioner was engaged as a peon in VCESD-I for 277 days in 1989, 284 days in 1990, 285 days in 1991 and 73 days in 1992 upto 31-3-1992. After discontinuing his services from 31-3-1992 as a peon he was engaged on hand receipt basis from 1-4-1992 in terms of the work order.

4. The Respondent No. 3 filed counter and denied the averments made in the petition and pleaded that the Petitioner was engaged as stop gap arrangement only from

28-2-87 to 15-12-88 and he was never engaged continuously. It is denied that the Petitioner has worked for a period of five years. The Petitioner filed OA No. 986/90 before the Hon'ble Central Administrative Tribunal seeking direction to prepare a seniority list of NMRs and regularization of the said category. The Petitioner has impersonated taking advantage of his name appearing in the records as Dhandangi Pilla Rayudu son of Papanna who worked temporarily. The Petitioner has mentioned his father's name as Mothilal Babji before the Hon'ble Central Administrative Tribunal instead of Papanna. The Respondent has taken the plea before the Hon'ble Central Administrative Tribunal that he impersonated. The OA was not pressed and the same was dismissed. The petition for amendment of the father's name filed by the Petitioner before the said tribunal was also dismissed as not pressed. The dismissal of the application filed before the Hon'ble Central Administrative Tribunal will attract the principles of constructive res-judicata. It is further stated that there is no post like messenger and the Petitioner was never engaged on regular basis. It is further submitted that the work order referred by the Petitioner dated 1-4-1992 is an order of contract by two parties for a specific job and for specific period of 6 months.

5. The Petitioner examined himself as WW1, besides examining Sri P. A. Chowdary, U. D. C. as WW2 and Sri K. Buchiraju, U. D. C., as WW3 who stated that the Petitioner never worked as a messenger in Civil Division at Gajuwaka. The Petitioner got marked Xerox copies of documents Exs. W1 to W6 which are as follows: Ex. W1 is the Secondary School Certificate, Ex. W2 is the transfer certificate, Ex. W3 is the caste certificate, Ex. W4 is the employment registration certificate, Ex. W5 is the counter filed by the Respondent in OA No. 987/92 on the file of Hon'ble Central Administrative Tribunal and Ex. W6 is the experience certificate.

6. As against this evidence the Respondent No. 3 examined Sri M. Subramanyam, Executive Engineer as MW1 who stated that the experience certificate Ex. W6 shows that it is purely temporary in nature and till someone in the office to join as stop gap arrangement and there is no post like messenger in the staff pattern and the Petitioner was never appointed as a messenger.

7. The Learned Counsel for the Petitioner contended that Petitioner was engaged by the Respondent for more than 240 days in a calendar year. As such he gets a right to be reinstated.

8. On the other hand, the Learned Counsel for the Respondent contended that the Petitioner was temporarily engaged as a stop gap arrangement and that he was never engaged for a period of 240 days in any calendar year. Further, it is not the case of the Petitioner that he was engaged for more than 240 days in a calendar year. As such, the Petitioner could not get any right for reinstatement and regularization.

9. It is not in dispute that he worked for sometime as a peon and messenger at different places and he served for a period of 5 years. It is not also in dispute that Petitioner has filed OA 986/90 before the Hon'ble Central Administrative Tribunal for regularization of his services

and he has mentioned his father's name as Mothilal Babji. The Respondents have taken the plea before the Hon'ble Central Administrative Tribunal that the Petitioner has impersonated taking advantage that one D. Rayudu, S/o Papanna was engaged temporarily for some time. The Petitioner has filed an amendment petition correcting the father's name 'Papanna'. While the proceedings are pending, Petitioner's counsel has not pressed the OA No. 986/90. Consequently the petition was dismissed. The burden lies on the Petitioner to show that he worked for 240 days in a calendar year for a period of 5 years. WW2 and WW3 who were examined to state that he worked at Gajuwaka in Civil Division as a messenger did not support his case. On the other hand, they stated that the Petitioner never worked in their office. The only evidence produced by the Petitioner is his experience certificate Ex. W6. It is only a Xerox copy. It shows that the Petitioner has worked from 28-2-87 to 15-12-88 on daily wages as stop gap arrangement. Certificate is said to have been issued by D. Laxmana Rao, Executive Engineer, Central P. W. D., Visakhapatnam Control Division No. II. The certificate does not show that he has continuously worked for a period of 240 days in a calendar year. The Petitioner has stated that he worked at different places but he did not choose to file service certificates. On considering the entire material on record it only shows that the Petitioner was engaged intermittently as a stop gap arrangement. The Petitioner cannot acquire any right for being engaged temporarily for reinstatement. It should be noted that a daily wager does not hold a post or derive any legal right unless he is appointed against the duly sanctioned post and upon following the statutory law operating the field. It is observed at para 17 in 2006 (2) Supreme Court Cases page 702, that, "It is now well settled that only, because a person had been working for more than 240 days, he does not derive any legal right to be regularized in service."

10. It is held in the said case 2006(4) Supreme Court Cases page 1 between the State of Karnataka and Others Vs. Umadevi and Others at para No. 43 as follows: "Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made

permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as 'litigious employment' in the earlier part of the Judgement, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the state the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates."

11. On considering the material on record and in view of the said rulings I hold that Petitioner is not entitled for any relief. In the result, the petition is dismissed and award is passed accordingly.

(Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 4th day of July, 2007).

T. RAMACHANDRA REDDY, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner

WW1 : Sri D. Pilla Rayudu
WW2 : Sri P. A. Chowdary
WW3 : Sri K. Buchiraju

Witnesses examined for the Respondent

WW1 : Sri M. Subrahmanyam
WW2 : Sri P. A. Chowdary
WW3 : Sri K. Buchiraju
WW4 : Sri M. Subrahmanyam
WW5 : Sri P. A. Chowdary
WW6 : Sri K. Buchiraju

Documents marked for the Petitioner

Ex. W1 : Copy of SSC certificate of WW1
Ex. W2 : Copy of transfer certificate of WW1
Ex. W3 : Copy of caste certificate of WW1
Ex. W4 : Copy of employment registration card of WW1
Ex. W5 : Copy of counter filed by Respondents in OA No. 987/1992
Ex. W6 : Copy of experience certificate of WW1

Documents marked for the Respondent

NIL

नई दिल्ली, 26 जुलाई, 2007

का. आ. 2345.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ महाराष्ट्र, के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, नासिक के पंचाट (संदर्भ संख्या 2/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-7-2007 को प्राप्त हुआ था।

[सं. एल-12012/99/2005-आई आर (बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 26th July, 2007

S. O. 2345.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 2/2006) of the Industrial Tribunal, Nasik as shown in the Annexure, in the Industrial Dispute between the management of Bank of Maharashtra and their workmen, which was received by the Central Government on 26-7-2007.

[No. L-12012/99/2005-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, MAHARASHTRA AT KOLHAPUR

Reference (IT) No. 2 of 2006

BETWEEN

The Assistant General Manager,
Bank of Maharashtra,
Maha Bank Building, S. No. 51711,
Plot No. 7, Kavala Naka,
Kolhapur.

... Ist Party

AND

Shri Ashok B. Nalavade,
At Post : Malakapur,
Taluka Shahuwadi,
District : Kolhapur.

... II Party

In the matter of reference
u/s 10 (1)(d) r.w. sec. 12(5) of
I.D. Act, 1947.

CORAM : P.S. Shinde, Industrial Tribunal

APPEARANCES

First Party absent.

Second Party absent.

AWARD

(Delivered on 25-6-2007)

Perused the order of reference. The second party was served notice on the given address but the same remained unserved for want of complete address. However, there is no other address available in the proceedings to serve the same.

In my opinion, no purpose will be served by keeping the file on the board. Even the first party did not bother to appear in the matter. As such, there is nothing on record to draw any conclusion as regards the issue involved in the reference order. No conclusions can be drawn in any manner whatsoever. It is a settled law that the act which is under challenge is to be proved and established by a person who raise the dispute. But the second party being not served and not possible to serve, the reference deserves to be answered in the negative by passing award.

The second party failed to establish the termination being illegal and unjustified. The second party is not entitled for any reliefs for want of establishing the same. The reference stands rejected, with no order as to costs.

Award accordingly.

Kolhapur,

Date : 25-6-2007.

P. S. SHINDE, Industrial Tribunal

नई दिल्ली, 26 जुलाई, 2007

का. आ. 2346.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिंडिकेट बैंक के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलौर के पंचाट (संदर्भ संख्या 72/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-7-2007 को प्राप्त हुआ था।

[सं. एल-12012/172/2003-आई आर (बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 26th July, 2007

S.O. 2346.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 72/2003) of the Cent. Govt. Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the Industrial Dispute between the management of Syndicate Bank and their workmen, which was received by the Central Government on 26-7-2007.

[No. L-12012/172/2003-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated 5th July, 2007

PRESENT

Shri A.R. Siddiqui, Presiding Officer

C.R. No. 72/2003

I Party

Shri V. Varadarajan,
S/o Shri P. Venkateshan,
D.No. 808, 4th Main,
24th Cross,
Vidhyaranyapuram,
Mysore

II Party

The Assistant General
Manager,
Syndicate Bank,
Zonal Office,
ICR, Gandhinagar,
Bangalore-560 009

AWARD

The Central Government by exercising the powers conferred by clause (d) of sub-section 2A of Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide order No. L-12012/172/2003-IR (B-II) dated 15th December 2003 for adjudication on the following schedule :

SCHEDULE

“Whether the action of the management of Syndicate Bank is justified, having compulsorily retired Shri V. Varadarajan, Clerk from the services of the Bank w.e.f. 28-2-2002 ? If not, what relief is workman entitled to and from which date ?”

2. The first party workman by way of his Claim Statement challenged the enquiry proceedings conducted in violation of principles of natural justice, the findings of the enquiry officer as suffering from perversity and the impugned punishment order in retiring him compulsorily from service as unjust and illegal on the grounds that he worked with the management bank rendering services for about a period of 20 years and while he was working as a Clerk at Thithimathi branch during 2001, disciplinary proceedings were started against him by issuing suspension order dated 24-11-2001 on the allegation that he behaved in a disorderly manner with a valued customer on 7-11-2001 in the branch premises. The charge sheet dated 13-1-2001 was issued against him alleging that on 7-11-2001 while discharging the duties of the branch he misbehaved with a customer by name Shri M.K. Ponnappa without any provocation while he was talking with Shri Thimmaiah, the then Assistant Manager. He abused the said Ponnappa in high pitch and in filthy language in front of other staff members and threatened him to get out of the branch. It was further alleged that at about 5 PM the first party carried CA/C Metal name plate outside the branch and tried to manhandle and beat the said customer while he was sitting in the shop of one Shri Ponnappa opposite to the bank and thereby committed a misconduct within the meaning of Clause 19.5 of the Bipartite Settlement; that the first party gave his reply to the charge sheet denying the aforesaid allegations stating that on 7-11-2001 being Wednesday, it was a non-public working day. The said customer entered the bank premises at about 5 PM fully drunk and intoxicated and was talking very loudly and causing disturbance and therefore, he requested the customer not to cause any disturbance. The customer suddenly became furious and started abusing him in filthy language and after having repented, later on, gave a letter to the bank withdrawing his earlier complaint about the incident in question. He contended that though he submitted the abovesaid letter of the customer during the course of enquiry, it was not considered by the enquiry officer and on the conclusion of the enquiry, he was held guilty of the charges ignoring the discrepancies brought out in the evidence of MW1 & MW 2 and the complaints filed by these witnesses based on which charge sheet was issued against him. He also contended that the enquiry

conducted against him was not fair and proper as he was not given proper opportunity to cross examine the witnesses in the absence of his defence representative. Therefore, he challenged the enquiry proceedings as well as enquiry findings as bad in law and against the principles of natural justice and the impugned punishment order as unjust and illegal. He also challenged the punishment order retiring him compulsorily from service as disproportionate to the gravity of the charges of misconduct alleged against him. He, therefore, requested this tribunal to set aside the impugned punishment order and to reinstate him in service along with the consequential benefits.

3. The management by its counter statement however, contended that during the course of enquiry conducted against the first party under the provisions of bipartite settlement, charges of misconduct leveled against him have come to be proved on the basis of oral and documentary evidence and accordingly the enquiry officer has submitted his findings. It contended that threupon opportunity of hearing was given to the first party by the Disciplinary Authority proposing the punishment of Compulsory Retirement and his reply to the enquiry report not being found satisfactory, the disciplinary authority rightly imposed the punishment of Compulsory Retirement which is very commensurate with the gravity of the charges of misconduct leveled against the first party. The management further contended that the appellate authority, also confirmed the order of the disciplinary authority after having appreciated the oral and documentary evidence produced during the course of enquiry and the reasonings given by the enquiry officer. As far as, the letter said to have been written by the customer, MW1 and said to have been produced by the first party during the course of enquiry, the management contended that that letter was not produced during the course of enquiry nor was marked nor was confronted with the said witness when he was examined during the enquiry. The management contended that enquiry against the first party was conducted in tune with the principles of natural justice giving fair opportunity to the first party to defend himself taking the assistance of DR but he has chosen to defend himself in person. Therefore, it cannot be said that he was not given opportunity to defend himself or to cross-examine the management witness. At Para 8 of the Counter Statement the management contended that it is not a solitary incident of misbehaviour by the first party but was the 7th time in succession he indulged in these types of incident and failed to improve himself despite lenient view being taken by the management again and again. Therefore, the management contended that in view of the fact that charges of misconduct leveled against the first party were proved and he was a habitual offender, the disciplinary authority was justified in inflicting the punishment of compulsory retirement being proportionate to the gravity of the misconduct committed by him. Therefore, the management requested this tribunal to reject the reference.

4. Keeping in view the respective contentions of the parties with regard to the validity and fairness or otherwise of the enquiry proceedings, this Tribunal on

15-9-2004 framed the following Preliminary Issue on the said point as under :

“Whether the DE conducted against the first party by the second party is fair and proper ?”

5. During the course of trial of the said issue, the management examined the enquiry officer as MW1 and got marked 12 documents at Exts. M1 to M12 and the material object as MOI. When they came to be posted for cross-examination MW1 on 8-3-2006 learned counsel for the first party filed a memo conceding the fairness of the domestic enquiry and accordingly this court recorded a finding to the effect that DE conducted against the first party is fair and proper. Thereupon, I have heard the learned counsels for the respective parties on the point of alleged perversity of the findings and the quantum of the punishment.

6. Learned counsel for the management supported the findings of the enquiry officer as based on sufficient legal evidence and the impugned punishment order passed by the disciplinary authority as just and legal. His contention was that having regard to the gravity of the misconduct punishment of compulsory retirement was quite proper and proportionate.

7. Whereas, learned counsel representing the first party argued that in the incident alleged that the first party abused the said customer in filthy language and made an attempt to assault him with the help of said name plate either in the office premises or outside the bank premises first of all not proved in the oral and documentary evidence produced during the course of enquiry and secondly, the charges framed against the first party on the aforesaid grounds must fail for the reason that neither the said customer filed a complaint nor the said Assistant Manager made any complaint with their superior authority against the first party immediately after the incident or within a reasonable time. On the other hand the complaint marked during the course of enquiry at Ex. MEX1, 1(a) & Ex. MEX.2 came into being after about a period of more than 12 to 13 days from the alleged date of the incident. Learned counsel also took the court through the statement of MW1 and MW2 during the course of enquiry so as to point out that they neither corroborated each other nor corroborated the recitals of the complaints, at least, to prove the charge that there was any attempt made by the first party to assault the said customer much less with the help of the said name plate. Therefore, learned counsel submitted that findings of the enquiry officer holding the workman guilty of the charges leveled against the first party are not based upon sufficient and legal evidence and therefore, suffered from perversity. As far as punishment of compulsory retirement is concerned, learned counsel submitted that it was too harsh and excessive in nature having regard to the fact that the first party rendered an unblemished service of 20 years under the management.

8. Before, I could appreciate the respective arguments of the learned counsels for the parties, let me

bring on record the very charge sheet issued against the first party as under :

Charge Sheet

“That you were placed under suspension vide Suspension Order No. Susp/2001/08 dated 24-11-2000 pending initiation of enquiry for the reasons stated therein.

Now it is reported against you as under :

That on 7-11-2001, while you were on duty, a value customer of the branch Shri M.K. Ponnappa came to the branch after the business hours. He approached Shri C.M. Thimaiah, Asstt. Manager who was in charge of the branch on that day, to discuss his loan proposal. While he was talking to Shri Thimaiah and other staff members, the customer Shri M.K. Ponnappa enquired the telephone number of our Regional Office, Mysore. At that time, you without any provocation picked up a quarrel with him and started abusing Shri M.K. Ponnappa in high pitch in filthy language in front of other staff members and threatened him to get out of the branch otherwise you would beat him. Immediately the customer went out of the branch to the shop of Shri C.M. Poonach, another customer of Thithimathi branch.

At about 5 PM you carried the CA/C metal name plate outside the branch and tried to manhandle and beat the customer Shri M.K. Ponnappa with the metal plate who was sitting in the shop of Shri C.M. Poonach, opposite to the Bank. Seeing this incident Shri C.M. Poonach interfered and averted the mishap. He also advised you not to behave in the above manner. However, you continued to shout and abuse Shri M.K. Ponnappa.

Because of your misbehaviour as above with the customer in the branch, the smooth functioning of the branch was disturbed. The above incident has also brought down the image and reputation of the bank. From the above reported incidents, it is alleged against you that you have conducted yourself in a riotous and disorderly manner, affected the smooth functioning of the branch and thereafter misbehaving with the customer, brought down the image of the bank.

Your above acts amount to Gross misconducts within the meaning of clause No. 19.5 of the Bipartite Settlement.

Therefore, you are charged with the commission of Gross misconducts of “riotous and disorderly behaviour on the premises of the bank” under clause No. 19.5(c), “doing acts prejudicial to the interest of the Bank” vide clause No. 19.5(j) and “misbehaviour towards customer arising out of bank's business” under clause No. 19.5(q) of the Bipartite Settlement. You are required to submit your explanation, if any, to this chargesheet within 15 days of its receipt.

Till disciplinary action is concluded in the above matter, you shall continue to be under suspension as per Suspension Order No. Suspn/2001/08 dated 24-11-2001."

9. Learned enquiry officer by his report dated 30-1-2002 after having discussed and referred to the oral testimony of the two witnesses namely, the said customer and the said Assistant Manager examined as MW1 & MW2 and the documents at Ex.MEX.1, 1(a) & Ex.MEX.2, on pages 7 & 8, while holding the workman guilty of the charges recorded his reasonings and findings as under :

"The above analysis of evidence has established beyond doubt about the misbehaviour of the CSE with the said customer inside and outside the branch on 7-11-2001. Of course, in the management side evidence there is certain variations as far as the timing of the incident taken place inside the branch on the evening of 7-11-2002. In MEX-1 (a), the customer has given two different timings about his visit to the branch as 4.15 pm and 3.30 pm respectively. In the cross examination, he answered as he came to the branch around 4.45/5.00 pm. Similarly, though MW2 in his deposition has stated that the customer visited the branch at 4.30 pm during cross-examination he agreed with the CSE that the customer came to the branch around 4.40/4.45 pm. In my view, this variation in the timing is only a minor aberration and the same will not in any way affect the main issue involved in the charge sheet. Because what is more important is the act of misbehaviour of CSE and not the timing of the misbehaviour. I also observe that there are certain contradictions in the evidence of MW1 and MW2 with regard to the incidence taken place outside the branch. while MW2 has come on record saying that the CSE chased MW1 with a metal plate in hand, the customer has said in MEX-1 that the CSE was holding a rod. Again while MW2 has stated in the enquiry that the CSE chased MW1 with a metal plate in hand. MW1 in MEX-1 as well as in his oral deposition has stated that when he was sitting in the tailor shop, the CSE came to him and threatened. In my opinion, this variation in the evidence of MW1 and MW2 will not alter the incidence of the CSE's misbehaviour with the customer. Because basically it is not the case of the CSE that the customer and the Assistant Manager made complaints against him out of any enmity. As the said complaints have been lodged in the normal course of business transactions and the incident mentioned therein have been duly witnessed by staff members and the shop owner situated opposite to the branch, the variations pointed out above will not eclipse the main incident of the misbehaviour of the CSE.

In the above circumstances, I am very much convinced to state that Shri V. Varadarajan, Clerk misbehaved with Shri M.K. Ponnappa a customer of the branch by shouting, abusing and threatening him with a metal plate on the evening of 7-11-2001 when he visited the branch on a NPBW day to

enquiry about a loan proposal. such conduct of the CSE is no doubt amounts to acts subversive of office discipline. the CSE being staff of a nationalized bank cannot afford to ask a customer to get out of the premises for the only reason that he visited the branch on a NPBW day and then threaten him with dire consequences. Further, the above said customer is having account with the bank for more than 30 years. The above circumstances clearly establish the high handedness and unseemingly behaviour of the CSE which will definitely bring down the image and reputation of the bank in the locality. therefore, from the above analysis of evidence, I have no hesitation to state that the misconducts framed against Shri V. Varadarajan and established in the enquiry amount to acts of riotous and disorderly behaviour, acts of misbehaviour towards customers arising out of bank's business and acts detrimental to the interest of the bank."

10. After having gone through the aforesaid findings, the oral testimony of MW1 & 2 and the aforesaid complaints one made by the customer Shri Ponnappa and the other made by said Shri Thimmaiah, the then Assistant Manager, I am of the view that as far as the first part of the charge of misconduct is concerned the management has been able to substantiate the same in the aforesaid oral testimony of MW1 & 2 and the documents produced by them. In the instant case there is no denial of the fact by the party that the said customer entered the premises of the bank on 7-11-2001 at about 5 PM and it is his case that he being under the influence of Alcohol was talking loudly disturbing him while discharging his duties and therefore, he requested him politely to go out of the bank as it was a non public business working day. Therefore, the first party did not deny the fact that the said customer had been to the bank and was engaged talking with MW2 with regard to some loan matter. Now, the only thing to be seen is that whether there was any provocation caused to the first party resulting into his misbehaviour with the customer. Both the customer as well as the MW2 in their examination chief in no uncertain terms have stated that when they were talking to each other and when the customer enquired with MW2 about the telephone number of the head office, the first party got irritated and started abusing the customer in filthy language shouting in high pitch as to why he required the phone number of the head office etc. It is the statement of MW1 that he being hurt by the language used by the first party he left the premises of the bank, went and sat in the tailoring shop opposite to the bank belonged to one Poonach. This fact has been very much corroborated in the statement of MW 2 and the oral evidence of MW1 & 2 made in their examination chief on this aspect of the case has not at all been controverted or challenged during the course of their cross examination by the first party. He just a stand that on that day he requested the customer to go out of the bank he being disturbed in discharging his duties. Therefore, the first party misbehaved with the customer hurting his feelings and asked him to go out of the bank premises has been very much established in the evidence of MW 1 & 2. In fact as noted above, the first party himself admitted that he asked the customer to leave the premises.

This behaviour of the first party certainly can be said to be disorderly and not becoming of a bank official dealing with the customers. His defence that customer was drunk and intoxicated and was talking loudly etc. has remained to be substantiated rather rebutted in the very statement of MW2, the then Assistant Manager who in no uncertain words stated that the customer was talking in usual voice and there was no question of the disturbing the work being carried out by the first party. Of course, there is no mention of the actual abusive language used by the first party at the time of the incident either in the aforesaid complaints or in the oral testimony of MW1 & 2 before the enquiry office. However, the fact which remains on record is that the first party misbehaved with the customer in riotous and disorderly manner which must have affected the smooth functioning of the bank. In the result, the findings recorded by the enquiry officer on Charge No. 1 must be held to be quite fair and proper based on sufficient and legal evidence.

11. Now as far as Charge No. 2 is concerned, it was rightly argued for the first party that it does not get support from the oral as well as the documentary evidence brought on record which suffered from serious infirmities and discrepancies. The second charge against the first party as noted above, is that about 5 PM, he carried the C A/C Metal Name Plate outside the branch and tried to manhandle and beat the said customer while he was sitting in the said Tailoring Shop of Mr. Poonach. First of all this fact is not found mention in the very suspension order dated 24-11-2001 issued to the first party at the earliest point of time. The reading of the first part of the suspension order is only to the effect that the first party without any provocation started abusing the customer in filthy language and in high pitch in front of the other staff members of the branch and did not stop shouting and abused the said customer despite the advise and interference of the staff members. It is further stated that in the process the first party attempted to manhandle him, customer was saved and he left the place. Therefore, there is no mention of the fact that the first party picked the said CAC/C Metal Name Plate at about 5 PM and went outside the branch so as to manhandle or beat the said customer as mentioned in the charge-sheet.

12. Now, coming to the statement of MW1 in his examination chief what he says is that when he enquired about the loan with Shri Thimmaiah (MW2) suddenly, the first party started abusing him and asked him to get out. He says that the abusive language used by him hurt him and he went out of the branch, then he says that at about 5 PM while he was sitting in the shop the first party came there with metal plate and threatened to will kill him. This statement of MW1 neither gets support from the statement of MW2 nor from the very recitals of his complaint at Ex.MEX. 1. The statement of MW2 on this aspect on the other hand is that when the customer left the branch, the first party at about 5 PM went out of the branch along with MO1 (metal plate) and he was chasing the customer outside the bank with the name plate resulting into the gathering of people outside the branch. He further stated that the customer went to the tailor's shop and the tension continued upto 5.30 PM. Therefore, as could be seen, this statement of MW2 is quite different from the statement of

MW1 himself. As per MW1 after he left the branch he was sitting in the shop and than first party came there along with the metal plate and threatened to kill him, whereas MW2 wants to say that while the customer was leaving the branch being asked by the first party to leave the spot still the first party was abusing him in filthy language and then he was chasing the customer with name plate till he went inside the shop in front of the branch. Now, coming to the contents of MEX. 1. The story with regard to the assault or attempt to make an assault finds a different version. As per the recitals of said complaint, while the customer was sitting in the said shop the first party came there holding an Iron rod in his hand giving threats to kill him. Therefore, keeping in view these material discrepancies in the oral testimony of MW1 & 2 and so also with the contents of the above said complaint it is highly unsafe for this tribunal to come to the conclusion that on the above said date there was any attempt made by the first party to assault to the customer much less with the help of the said name plate either in the premises of the bank or at the above said shop situated in front of the branch. Moreover, if really such serious incidence has taken place, as argued for the first party, there would not have been so much delay caused in filing the complaint either by the customer himself or by the said Assistant Manager. They slept over the matter for about a period of 13 days and then said to have been made the complaint based on which charge sheet was issued. Looking into the aforesaid discrepancies and contradictions with respect to the material aspects of the case namely, the charge of attempt to assault the said customer by the first party in the suspension order, in the charge-sheet, in the oral testimony of MW1&2 and the complaint and also not ignoring the fact of inordinate day caused in filing the complaint, it can be safely concluded that the prosecution story that the first party made an attempt to assault the customer either in the premises of the branch or outside the branch is a make believed story exonerated and after thought so as to give the colour of gravity to the misconduct alleged against the first party. In the result, this court has no hesitation in the mind coming to the conclusion that the findings of the enquiry officer as far as charge No. 1 leveled against the first party concerned is quite fair and proper supported by sufficient and legal evidence and whereas, they suffered from perversity with regard to the Second Charge of misconduct leveled against the first party.

13. Now, the question is about the quantum of the punishment. If really the second charge of misconduct also were to be proved against the first party, then this court would have been little bit slow and hesitant in interfering with the impugned punishment awarded against the first party retiring him compulsorily from service. Now, as the second charge of misconduct is not proved against the first party and the charge proved against him is not that grave in nature, it appears to me that punishment of compulsory retirement from service imposed upon the first party needs interference at the hands of this tribunal. Under the facts and the circumstances, it appears to me that ends of justice will be met if the first party is dealt with punishment of withholding of three annual increments from the date of

impugned punishment order with cumulative effect denying him the back wages from the date of impugned punishment till the date of his reinstatement excluding the wages if any paid to him by way of pension. Hence the following award :

AWARD

The reference is partly allowed. The management is directed to reinstate the first party workman without back wages (excluding the wages if any already paid to him by way of pension in pursuance to the impugned punishment order) from the date of impugned punishment order till the date of reinstatement withholding his three annual increments from the date of the punishment order with cumulative effect. However, his services shall be taken to be continuous from the date of punishment order till the date of reinstatement for the purpose of pension benefits. No costs.

(Dictated to PA, transcribed by her, corrected and signed by me on 5th July 2007).

A.R. SIDDIQUI, Presiding Officer

नई दिल्ली, 26 जुलाई, 2007

का. आ. 2347.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिंडिकेट बैंक के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलौर के पंचाट (संदर्भ संख्या 237/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-7-2007 को प्राप्त हुआ था।

[सं. एल-12012/153/1996-आई आर (बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 26th July, 2007

S. O. 2347.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 237/1997) of the Cent. Govt. Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the Industrial Dispute between the management of Syndicate Bank and their workmen, which was received by the Central Government on 26-7-2007.

[No. L-12012/153/1996-IR (B-II)]
RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
BANGALORE

Dated 13th July, 2007

PRESENT

Shri A.R. Siddiqui, Presiding Officer

C.R. No. 237/1997

I Party

Shri K. Gangadhar,
No. 7/A, 4th Main Road,
Palace Guttahalli,
Bangalore-560 003

II Party

The General Manager,
Syndicate Bank,
Head Office,
Manipal-560 003

AWARD

The Central Government by exercising the powers conferred by clause (d) of sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide order No. L-12012/153/96-IR (B-II) dated 16th May 1997 for adjudication on the following schedule :

SCHEDULE

"Whether the action of the management of Syndicate Bank is justified in dismissing Shri K. Gangadhar from service w.e.f. 3-4-1993 ? If not, to what relief the workman is entitled ?"

2. A charge sheet dated 15-11-1991 as per Ex. M1 came to be issued against the first party workman in the following terms :

Charge Sheet

That during the period between 11-1-1985 and 18-5-1990 you were functioning as Attender at our Malleswaram Main branch, Bangalore.

That on 26-4-1990, you remitted a sum of Rs. 32,000 at the branch, earmarking the credit towards Suspense Account.

Following circumstances appear on record in respect of the above remittance :

That on 20-4-1990, a sum of Rs. 60,000 was paid by the branch against a cheque and that on 23-4-1990, the officials working at the branch found :

- That a portion of the cashier's payment scroll dated 20-4-1990 was torn out and half of the bottom portion of the scroll was missing and;
- That the Manager's scroll dated 20-4-1990 was missing and;
- That the paid cheque for Rs. 60,000 was also not available.

That when enquiries were going on in the branch in the above matter, on 26-4-1990, you addressed a letter to the branch manager on your own, informing him inter alia, as under :

- That you issued Token No. 23 in respect of a cheque without the cheque being deposited at the branch, and
- That later, you facilitated payment of the cheque without it being debited to the account on which it was drawn;

- (iii) That thereafter, you removed the paid cheque from the branch records and gave it to S/Shri U.S. Narayana, working at our Balepet branch, Bangalore. Shri Shivalingaiah working at our Yeshwanthpur branch, Bangalore and Shri Puppaswamy, an outsider,
- (iv) That you received a sum of Rs. 32,000 from the said Shri U.S. Narayana, Shivalingaiah and Puppaswamy etc,

That on 26-4-1990 you reimbursed a sum of Rs. 32,000 to the Bank, stating that the amount related to the fraudulent withdrawal of Rs. 60,000 made from the branch on 20-4-1990 etc.

The above circumstances go to indicate :

- (a) that you withdrew/facilitated withdrawal of a sum of Rs. 60,000 from the branch on 20-4-1990 by fraudulent means and dubious methods;
- (b) that in order to cover up such acts on your part, you removed/caused to be removed from the branch records, the relative paid cheque and the Manager's scroll dated 20-4-1990 and destroyed them/caused their destructions and that you also torn out/caused to be torn out relevant portion of the Cashier's payment scroll dated 20-4-1990.

By your above acts, you committed acts of "Gross misconduct" within the meaning of Clause No. 19.5 of the Bipartite Settlement. We therefore, charge you "for doing acts prejudicial to the interests of the Bank", vide clause No. 19.5(j) of the Bipartite Settlement.

Please let us have your statement of defence if any, within 15 days from the date of receipt of this charge sheet by you.

Pending inquiry into this charge sheet, you will continue to be under suspension until further orders.

3. The first party since did not respond to the charge sheet by giving his reply or the explanation, the management appointed an enquiry officer as per the letter at Ex.M2 dated 6-1-1992 and it appears that despite the enquiry notices being sent to the first party by RPAD as per Ex.M3 returned unserved with an endorsement "not claimed", the enquiry officer proceeded with the enquiry ex parte on different sittings. The first party was served with day to day proceedings copies at Ex.M5 under a covering letter at Ex.M6 by RPAD which again was not served upon him, returned with a postal endorsement as per Ex.M7 and thereupon, the enquiry proceedings were concluded and the enquiry officer submitted his findings holding the workman guilty of the charges leveled against him in the charge sheet.

4. The first party workman by way of his Claim Statement challenged the dismissal order passed against him as unjust and illegal, enquiry findings as perverse and the proceedings of enquiry conducted against him as

opposed to the principles of natural justice. He averred that being appointed as a Peon by order dated 26-12-1984, he was confirmed in the services w.e.f. 11-7-1985 and rendered his services without any black mark in his services till he was served with the charge sheet and thereafter, was dismissed from services. He contended that as per the bipartite settlement if the management has prosecuted the delinquent concerned for the very charge of misconduct alleged in the charge sheet and if he were to be convicted then he is liable for dismissal. However, in case of acquittal it shall be opened for the management to proceed against him either for gross or minor misconduct and that during the pendency of criminal case disciplinary proceedings should not have been initiated against him. He contended that after filing a complaint with the police the management issued a charge sheet on the very same allegation based on which complaint was filed. Therefore, disciplinary proceedings were contrary to the Bipartite Settlement and principles of natural justice. He contended that after he was served with the charge sheet he was not served with any enquiry notice and no reasonable opportunity was given to him to participate in the proceedings and it is on the basis of the ex parte enquiry held against him he was dismissed from service and his appeal against the dismissal order also came to be dismissed. Therefore, his contention was that enquiry proceedings were against the principles of natural justice and the order passed against him dismissing him from service was bad in law. He requested this tribunal to set aside the dismissal order reinstating him in service with all consequential benefits.

5. The management on the other hand, while meeting the case of the first party by way of counter statement, among other things, contended that the charge sheet was sent to the first party to the last address known to the management and it was served upon him on 4-12-1991. The first party did not submit his explanation and therefore, enquiry was held against him and despite the efforts made by the enquiry officer to serve enquiry notice upon him, when his presence could not be secured, enquiry proceedings were conducted ex parte and on the basis of the enquiry findings holding him guilty of the charges he was unfortunately dismissed from service. The management contended that the criminal proceedings and the disciplinary proceedings are altogether distinct and different, the standard of proof being not one and the same. The management also contended that the findings of the enquiry officer were based upon sufficient and legal evidence which was also not controverted and challenged by the first party as he remained absent during the course of enquiry. The management contended that keeping in view the gravity of the misconduct, the first party deserve extreme punishment of dismissal and accordingly, was dismissed from service.

6. From the records before this tribunal, it would appear that on the basis of the respective pleadings of the parties this tribunal on 21-12-1998 framed a preliminary issue as to "whether the Domestic Enquiry conducted against the first party by the second party was according to the principles of natural justice and Bipartite Settlement provisions".

7. My learned predecessor after due trial of the said issue and after hearing the learned counsels for the respective parties, by order dated 30-6-1999, recorded a finding on the above said issue to the effect that the Domestic Enquiry was in accordance with law. My learned predecessor by award dated 23-8-2001 rejected the reference. It is aggrieved by the aforesaid order on Domestic Enquiry issue and the award passed, the first party approached the Hon'ble High Court in Writ Petition No. 38465/2002 and his Lordship of our Hon'ble High Court vide order dated 11-8-2006 while upholding the order of this tribunal dated 30-6-1999 on Domestic Enquiry issue as in accordance with law, however, quashed the impugned award with a direction to this tribunal to decide the matter afresh.

8. After the remand, both the parties made appearance before this tribunal and were heard in the matter on merits of the case, as findings of this tribunal on Domestic Enquiry was held to be in accordance with law as per the aforesaid orders in Writ Petition.

9. Learned counsel for the first party R.N. Nagendra vehemently argued that the award passed by this tribunal has come to be quashed by the Hon'ble High Court mainly for the reason that this tribunal did not look into as many as the 24 documents produced by the first party at Ex.W2 series and that this tribunal did not look into the contention of the first party that he was acquitted by judgement dated 1-12-1997 by the competent court of law. Therefore, learned counsel in his argument just relied upon the judgement of the acquittal in favour of the first party and contended that the first party being prosecuted by the management on the basis of the complaint containing to the very charges of misconduct leveled against him in the chargesheet and he being acquitted by the competent court, the management could not have proceeded ahead with the disciplinary proceedings and then to pass the dismissal order passed against the first party. His contention was that when the charges of misconduct and the facts much less the set of evidence produced during the course of criminal trial were one and the same and the first party was acquitted under due process of law, the management was not justified in once again conducting the disciplinary proceedings and holding the workman guilty of the very charges for which he has been acquitted by the court, honourably. In support of this argument learned counsel relied upon the judgement of their Lordship of Supreme Court reported in AIR 1999 SC 1416-Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and another. Learned counsel did not comment upon the findings of the enquiry officer much less to contend that they suffered from any perversity.

10. Whereas, learned counsel for the management with equal vehemence argued that though the charges of misconduct as alleged in the chargesheet and in the complaint to the police by the management apparently were one and the same but the set of witnesses rather the evidence produced during the course of criminal trial and during the course of enquiry proceedings were quite distinct and different and the charges of misconduct leveled against the first party have been proved by way of sufficient and legal evidence independent of the evidence produced

during the course of criminal trial. Learned counsel further submitted that the acquittal of the first party was not a honourable acquittal but on the ground that charges were not proved against him beyond any reasonable doubt and he stands benefit of doubt. Therefore, learned counsel submitted that principle laid down by their Lordship of Supreme Court in the above said case did not apply to the facts of the present case being distinct from each other. He argued that the judgement of the trial court could not have been looked into by the management for the simple reason that proceedings of enquiry came to be concluded somewhere in the month of June 1992 itself, findings were submitted on 13-9-1992 and the dismissal order came to be passed in the month of April 1993 itself, whereas, the judgment by the criminal court came to be passed in the year 1997. Therefore, learned counsel submitted that since the misconduct has been proved against the first party workman during the course of enquiry based on quite different set of evidence and different set of witnesses, it cannot be held to be bad in law or in the light of the provisions of bipartite settlement and that the acquittal order in favour of the first party will not come to his rescue. He relied upon a case reported in 2006 LLR 326 SC-South Bengal State Transport Corporation Vs. Swapan Kumar Mitra & Ors in support of his arguments.

11. After having gone through the records, the aforesaid 24 documents filed by the first party at Ex.W2 series including the judgement of the criminal court, findings of the enquiry officer and in the light of the principle laid down by their Lordship of Supreme Court in the aforesaid two decisions, I do not find much substance in the arguments advanced for the first party. Now it is well settled principle of law that in a case where the delinquent concerned has been acquitted as an accused in a criminal case launched by the management concerned giving him benefit of doubt, such an acquittal in his favour will not come to his rescue to plead with the management that either enquiry proceedings should not be initiated against him for the very same charge or that he should not be held guilty for the charges of misconduct for which charge he has been acquitted by the criminal court. In the instant case though the Learned Magistrate has given the reasonings as to why prosecution failed to establish the charges of misconduct leveled against him, however, at the end of the judgement the Learned Magistrate observed as under :

"Under these circumstances I hold that the Prosecution has failed to prove the offences alleged against the accused beyond all reasonable doubt, and that the accused is entitled for acquittal on the benefit of doubt."

12. Therefore, from the aforesaid observations it can be safely concluded that the prosecution since failed to prove the offences/charges alleged against the first party workman beyond any reasonable doubt, he was held to be entitled for acquittal on the benefit of doubt. Moreover, as contended for the management this is the judgement by the criminal court rendered in the month of December 1997 and whereas, in the month of April 1993 itself the dismissal

order against the first party was passed by the management after holding necessary Domestic Enquiry against him. There was no occasion for the management to have looked into the aforesaid judgement so as to drop the enquiry proceedings against the first party or not to have imposed the punishment in question upon him in the light of the said acquittal order. The principle laid down by their Lordship of Supreme Court in the aforesaid Capt. M Paul Anthony case in my humble opinion are not applicable to the facts in the instant case. The observation made by their lordship at Para 34 of the said decision relevant for the purpose run as under :

"In the instant case, the Superintendent of Police had raided the residential premises of the appellant and had recovered a mining sponge and ball weighing 4.5 grams and 1276 grams of gold bearing sand. It was on this basis that criminal case was launched against him. On the same set of facts, constituting the raid and recovery, departmental proceedings were initiated against the appellant as the "recovery" was treated to be a 'misconduct'. On the service of the chargesheet, the appellant raised an objection that the departmental proceedings may be stayed as the basis of these proceedings was the raid conducted at his residence on which basis a criminal case had already been launched against him. The findings recorded by the enquiry officer indicate that the charges framed against the appellant were sought to be proved by the Police officers and Panch witnesses, who had raised the house of the appellant and had effected recovery. They were the only witnesses examined by the enquiry officer and the enquiry officer relying upon their statements came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the court on a consideration of the entire evidence came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the 'raid and recovery' at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex parte departmental proceedings, to stand."

13. Therefore, in the aforesaid case as could be read from the facts, the main evidence to be let in before the criminal court was with respect to the raid and recovery of certain property from the delinquent's house concerned. Those recovery panchas did not support the prosecution during the course of trial but it appears they were also examined on behalf of the management during the course of enquiry and it is based upon their evidence, the delinquent was held to be guilty of the charges leveled against him. Therefore, their Lordship laid down the principle that in such a situation i.e. where the charges and the facts and the set of evidence is one and the same involved in the criminal prosecution as well as the

disciplinary proceedings, the management was not justified in holding the workman guilty of the charges, when the criminal court had thrown out the whole of the case of the prosecution. In the instant case, the position is very much different. Though charges of misconduct leveled in the chargesheet as noted above, read in detail, as compared with the allegations made in the complaint made to the police concerned apparently appear to be similar but basically they are not one and the same. That apart, the oral and documentary evidence during the course of trial was not one and the same which was pressed into service by the management during the course of enquiry proceedings. The prosecution before the criminal court produced 10 witnesses as PW1 to PW10 and got marked in as many as 9 documents at Ex.P1 to P9. Out of these 10 witnesses only PW1, 2 and 5 only were examined during the course of enquiry proceedings as MW2, 4 and 7 respectively. With regard to the documentary evidence, none of the aforesaid documents at Ex. P1 to P9 were the subject evidence during the course of the enquiry proceedings. During the course of enquiry as could be read from the evidence brought on record and the findings of the enquiry officer, 10 witnesses were examined as MW1 to MW10 and four documents were marked at Ex.M1 to M4. Except as noted above, MW2, MW4 and MW7, the other witnesses were not the witnesses who were examined during the course of criminal trial. The four documents marked during the course of enquiry also do not find evidence of the prosecution during the criminal trial. Therefore, the set of evidence oral and documentary let in during the course of criminal trial and the set of evidence pressed into service during the course of enquiry proceedings being altogether different, the principle laid down by their Lordship of Supreme Court in the above said decision in my humble opinion will not come to the rescue of the first party to take advantage of the above said acquittal order in his favour. Moreover, as noted above, the first party came to be acquitted in the aforesaid case on the ground that prosecution did not establish the offences/charges against the first party beyond any reasonable doubt and that he was given benefit of doubt. Their Lordship of Supreme Court in the subsequent decision rendered and cited on behalf of the management and referred to supra have held the view that the order of acquittal cannot conclude the departmental proceedings. They observed that in a criminal case charge has to be proved by proof beyond any reasonable doubt and in departmental proceedings the standard of proof of proving the charge is mere preponderance of probabilities. In the instant case, as could be read from the enquiry findings, the charge of misconduct leveled against the first party has been taken to be proved in the light of oral testimony of the aforesaid management witnesses and the aforementioned documentary evidence. A perusal of the findings with reference to the evidence brought on record will make it abundantly clear that apart from the oral testimony of the above said management witnesses, the enquiry officer based his findings on the confession letter given by the first party marked at Ex.MEX1. The next important document which was considered for proof of the charge against the first party was the credit slip dated 26-4-1990 under the signature of

the first party himself whereunder he deposited Rs. 32,000 marked at Ex.MEX.2 in the enquiry which amount was credited to the suspense account maintained by the bank. Therefore, relying upon the aforesaid confession letter of the first party and the aforesaid credit slip coupled with the other oral and documentary evidence, the learned enquiry officer came to the conclusion that the first party was guilty of the charges. It is to be noted that the aforesaid confession letter never came to be challenged or disputed by the first party nor the aforesaid credit slip, as unfortunately he did not participate in the proceedings of enquiry which enquiry proceedings have been held to be fair and proper by this tribunal. Therefore, these two important documents reliance on which was placed by the enquiry officer in coming to the conclusion that the first party was guilty of the charges were not the subject evidence of the criminal trial and for this reason also the acquittal of the first party by way of said judgement of the criminal court cannot be taken support of by him to nullify the enquiry proceedings conducted against him. The rest of the 23 documents produced by the first party out of the aforesaid 24 documents marked at Ex.W2 cannot be looked into by this tribunal as they are pertaining to the proceedings of the aforesaid criminal trial. They include the deposition of the witnesses, statement of first party under Section 33 Cr.PC, complaint to the police by the management and the statements recorded by police during the course of investigation. We are only concerned in this case about the aforesaid judgement under which the first party was acquitted and as noted above, it is, not to help the case of the first party. As noted above, learned counsel for the first party did not touch the point of perversity of the findings submitted by the enquiry officer except to raise the question of acquittal of the first party by the criminal court. In the result and for the foregoing reasons I am to conclude that findings of the enquiry officer holding the workman guilty of the charges did not suffer from any perversity and in the result, the order of dismissal passed against the workman cannot be fault with. Hence the following Award :

AWARD

The reference stands dismissed. No costs.

(Dictated to PA transcribed by her corrected and signed by me on 13th July, 2007).

A.R. SIDDIQUI, Presiding Officer

नई दिल्ली, 26 जुलाई, 2007

का. आ. 2348.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केनरा बैंक के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय, एर्नाकुलम के पंचाट (संदर्भ संख्या 282/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-7-2007 को प्राप्त हुआ था।

[सं. एल-12012/66/1997-आई आर (बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 26th July, 2007

S. O. 2348.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 282/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam as shown in the Annexure, in the Industrial Dispute between the management of Canara Bank and their workmen, which was received by the Central Government on 26-7-2007.

[No. L-12012/66/1997-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

PRESENT

Shri P. L. Norbert, B.A., LL.B., Presiding Officer

(Monday the 16th day of July, 2007/25th Ashada, 1929)

I.D. 282/2006

(I.D. 55/97 of Labour Court, Ernakulam)

Workman : Smt. Elizabeth Davis
C/o Francis Peter,
Oorakathu House, Behind SWTS
Aluva-683 101.

Adv. M/s. Yousef & Ayesha.

Management : The Deputy General Manager
Canara Bank,
Circle Office
Thiruvananthapuram.

Adv. Shri Raju Abraham Pulpara.

AWARD

This is a reference made by Central Government under Section 10(1)(d) of Industrial Disputes Act, 1947 for adjudication. The reference is :

"Whether the action of the management of Canara Bank in dismissing the services of Smt. Elizabeth Davis w.e.f. 13-12-1994 is legal and justified? If not, to what relief the said workman is entitled?"

2. The facts of the case in brief are as follows :—

The claimant, Smt. Elizabeth Davis had entered service of Canara Bank as Typist-cum-Clerk on 17-7-1981 in Ottappalam Branch. On 14-12-1992 she was served with a charge-sheet by the Deputy General Manager of the Bank. The allegation was that she remained absent unauthorisedly from 2-4-1992 onwards and that she had gone abroad without prior permission and had not returned as required by the bank and thus wilfully disobeyed the lawful and reasonable orders of her superiors and acted prejudicial to the interest of the bank. Thus the claimant committed gross misconduct falling within Chapter XI, Regulation 3, Clause (d) & (m) of Canara Bank Service Code. According to the claimant she had explained the

circumstances under which she had gone abroad suddenly and that she had intimated the Manager and had applied for leave. However, before expiry of the leave period she fell sick and had intimated the Branch Manager about her ill health and her inability to return to India. According to the claimant the management without considering the explanation of the claimant conducted a domestic enquiry. No notice was given to the claimant regarding the enquiry by the Enquiry Officer. When she came to know of the enquiry she made a request to the Enquiry Officer to adjourn the enquiry to a future date as she was sick and was unable to attend the enquiry in near future. However the enquiry was conducted ex parte. She was not given sufficient opportunity for defending. The Enquiry Officer had a biased mind. The Disciplinary Authority did not properly consider the report of the Enquiry Officer and the claimant was not given an opportunity of hearing regarding the proposed punishment. The Disciplinary Authority imposed punishment of dismissal. The punishment is disproportionate and excessive. An appeal filed was rejected. A revision also was filed, but without any success. The finding of the Enquiry Officer is not based on evidence. The absence was not unauthorized. Hence the enquiry, findings and punishment are to be set aside.

3. The management in the written statement, which is pretty long, contends that no application for leave was submitted by the claimant and no information was given about the journey to foreign country and her absence for some time. For going abroad prior permission of the management is required. The claimant was in the habit of taking long leave and extending leave for a number of months while going abroad. Repeated requests for resuming duty were not obeyed by the claimant. Once disciplinary action was taken and increment was stopped for a period of two years without cumulative effect. Yet the claimant, without making change in her habit, on 2-4-1992 went abroad without prior permission and without applying for leave. A leave application and intimation of having gone abroad was sent subsequently with a date of 5-4-1992, but received in the bank in August, 1992 from a local address. She wrote from Muscat on 3-6-1992 applying for extension of leave for another three months on medical ground without a medical certificate. The management sent a telegram on 10-7-1992, and repeatedly thereafter on several occasions, to report for duty immediately. But the claimant went on applying for extension of leave and at last joined duty only on 30-10-1992. Even then she did not produce a medical certificate for the absence and medical fitness certificate for joining duty. Hence she was charge-sheeted on 14-12-1992 and an enquiry was conducted. After joining duty again she went abroad within a very short time. The Enquiry Officer sent a notice of enquiry. But she did not turn up. Before the 2nd sitting of enquiry she informed the Enquiry Officer that she was unable to attend the enquiry due to ill-health and the enquiry may be conducted some day after 10-12-1993. The Enquiry Officer was not convinced of the reasons stated by the claimant and hence the enquiry was proceeded with ex parte. She was found guilty of the charges by the Enquiry Officer. A report and proceedings of enquiry were sent to the claimant. The

Disciplinary Authority proposed a punishment and called the claimant for personal hearing. She did not attend despite several chances given to her. The misconduct being gross in nature the punishment of dismissal was imposed. The Enquiry Officer had complied with the principles of natural justice and had given the claimant enough opportunity to attend the enquiry and defend. She did not avail the opportunity. The findings are based on materials on record. The Enquiry Officer had no reason to act with a biased mind. The punishment is proportionate to the charges. The Appellate Authority considered the merits of the report of Enquiry Officer as well as the order of the Disciplinary Authority and rightly rejected the appeal. No interference in the matter of findings or punishment is called for.

4. The claimant filed a rejoinder refuting the contentions in the written statement and reiterating the contentions in the claim statement.

5. In the light of the above contentions the following points arise for consideration :

- (1) Is the enquiry valid ?
- (2) Is the finding sustainable ?
- (3) Is the punishment proper ?

The evidence consists of the oral testimony of WW1 and documentary evidence of Exts. W1 to W7 on the side of workman and MW1 and Exts. M1 to M4 on the side of management.

6. Point No. (1) :

Though a contention regarding validity of enquiry is raised in the claim statement it appears that the claimant did not move the State Labour Court where the reference was pending for a finding on the issue of validity of enquiry as a preliminary issue. Instead parties went on adducing evidence on both sides. When the matter came up before this court after transfer of the file to this court for final hearing, it was made clear that the reference is being taken up for final award and parties were directed to put forward the final argument. Though the case was argued on merits, at the end an argument note was submitted by learned counsel for the claimant. It appears from the argument note that she wanted validity of enquiry to be considered as a preliminary issue. If at all claimant wanted this issue to be considered as a preliminary point that should have been done after Enquiry Officer was examined. The fact that the claimant also adduced evidence is indicative of the fact that the claimant did not insist the issue to be taken as a preliminary issue. However I will consider this point along with other points.

7. The grievance of the claimant is that she was not given a notice of enquiry. The Enquiry Officer (MW1) says that he had sent a notice through Ottapalam Branch (where the claimant was working at the relevant time) to the local address. But it returned with an endorsement, 'addressee out of India'. Though notice in the residential address was sufficient in order to give an opportunity to the claimant the enquiry was adjourned from 27-7-1993 to 28-9-1993, after 2 months. This is seen from the proceedings of enquiry

contained in Ext. M1 Enquiry File (pages 14 & 16). A notice of the 2nd sitting of enquiry was given to the claimant in the foreign address and the notice was served. The claimant acknowledged the notice and wrote to the Enquiry Officer requesting for time till 10-12-1993 for attending the enquiry. Ext. W1 is the letter written by claimant to the Enquiry Officer requesting to postpone the enquiry to some day after 10-12-1993. However the motive of the claimant for seeking adjournment was vehemently challenged by the Presenting Officer. Considering the fact that the claimant was seeking time on medical ground, but without a medical certificate, the attending circumstances and the conduct of the claimant and long adjournment sought the Enquiry Officer did not feel the request genuine and hence proceeded with the enquiry ex parte. The claimant has also a grievance that she was not aware of the date of 3rd sitting of enquiry. The 3rd sitting was conducted on the very next day, on 29-9-1993. That day evidence was closed. The claimant was given notice of the 2nd sitting admittedly. No evidence was adduced on the 1st sitting on 27-7-1993 on the side of management. Two months' time was given thereafter. Having not attended the 2nd sitting of the enquiry and having not made any arrangement to know the date of the next sitting the claimant is not justified in saying that she should have been informed by the Enquiry Officer in writing to her foreign address about the 3rd sitting also. The Enquiry Officer had proceeded ex parte on 28-9-1993 itself. Thereafter he was not required to send intimation in writing to the delinquent. It was for her to send someone to know the date of next enquiry.

8. Another contention raised by the claimant is that she was not given sufficient opportunity to adduce evidence and cross-examine management witnesses. There is no merit in the contention as she remained absent throughout the enquiry. She cannot be compelled by the Enquiry Officer to adduce evidence and defend her case. There is nothing to show that the Enquiry Officer acted with a biased mind and no reasons are stated by the claimant for alleging bias on the part of Enquiry Officer. It is a callous contention carelessly made.

9. The next contention is that the Disciplinary Authority did not hear her regarding proposed punishment. It can be seen from page 11 of the written statement that several adjournments were given to the claimant for personal hearing. It is appropriate to extract a portion of the pleadings from page 11 of the written statement :

"A personal hearing was fixed to be held on 28-5-94 at Circle Office, Trivandrum and this was communicated to the workman. But she failed to attend the hearing. She sent a telegram which was received by the Bank on 30-5-94 intimating her inability to attend the hearing and hearing was adjourned to 27-7-94. But she did not attend the personal hearing on 27-7-94. The personal hearing was again adjourned to 22-8-94 and it was further adjourned to 24-8-94. But she failed to attend the hearing despite notifying it to her. She submitted a letter dt. 24-8-94 informing her inability to attend the personal hearing. This was received by the

Disciplinary Authority only on 3-9-94. The personal hearing was again adjourned and fixed to be held on 13-10-94. As the workman informed her inability to attend the hearing fixed to be held on 13-10-94 it was again adjourned and fixed to be held on 21-11-94. The same was further postponed to 24-11-94. The workman was duly notified in all the cases."

This is not specifically denied by the claimant in her rejoinder except a general denial that she was not given personal hearing on the proposed punishment. Had her contention been true she would have specifically denied having sent letters to Disciplinary Authority seeking time for attending personal hearing. There is no basis for the contention of the claimant that she was not given opportunity for personal hearing. Thus none of the contentions raised by the claimant, regarding violation of the principles of natural justice and irregularity of proceedings, can stand. The enquiry is valid and held in accordance with the procedure.

10. Point No. (2) :

Before going into the merits of the issue let me refer to the submission made by the learned counsel for the management that the claim statement is not signed by the claimant, but it contains a forged signature. What prompted the learned counsel to say so, is because of the difference in signature in Vakalath and claim statement. In the Vakalath she had signed as Elizabeth Davis (Davis is her husband's name) and in claim statement she signed as Elizabeth Peter (Peter is her father). At the request of learned counsel for the management copy of claim statement and Vakalath were marked as Exts. M3 and M4 respectively. On 4-7-2007 she filed an affidavit and produced a copy of the passport. In the passport her name is, 'Komban Elizabeth Davis' and signed as Elizabeth Davis. The passport shows that on 29-5-1998 she had left Sultanate of Oman for India and returned to Oman on 19-7-1998. The claim statement was filed on 29-6-1998 and copy was received by opposite counsel on the same day (vide endorsement on the original claim statement). Therefore she was in India on the date of signing claim statement. But she happened to sign claim statement as Elizabeth Peter which, she says in her affidavit, is her original signature (before her marriage). In her deposition before court she has signed as Elizabeth Peter. Her affidavit is true. Both Elizabeth Davis and Elizabeth Peter are one and the same person and signatures in Vakalath and in claim statement are of the same person, the claimant (Elizabeth Davis).

11. Ext. ME1 in Ext. M1 enquiry file is the charge-sheet. The charge is that Smt. Elizabeth Davis remained absent unauthorisedly from 2-4-1992, that she failed to obtain permission for going abroad and had not submitted a declaration for that purpose as per rules. The bank had by telegram on 10-7-92 instructed the claimant to report for duty immediately. Several such directions were given to resume duty. But the claimant failed to report for duty. Thus the claimant wilfully disobeyed the lawful and reasonable orders of superior officers and committed gross misconduct. The action of the claimant is prejudicial to the

interest of the bank. Thus the claimant has violated Chapter XI, Regulation 3, Clause (d) & (m) of Canara Bank Service Code.

12. The Enquiry Officer has found that the claimant had not applied for leave on time and not sought prior permission for going abroad and disobeyed the directions of superior officers to report for duty. It is seen from the written statement, paragraph 10 to 15 (pages 4 to 9) that she was in the habit of availing long leave even on prior occasions. On 31-7-1985 she had requested for privilege leave for 4 months from 2-9-1985 for going abroad and she was granted 24 days leave. She sought extension of leave on sick grounds from 26-9-85 to 24-10-1985. That was granted. She did not join duty on expiry of that period. She was asked to report for duty immediately by letter dated 30-10-1985. But she joined duty only on 9-11-1985. However the bank did not take any action and took a lenient view. Again she took leave for 15 days for going abroad from 21-7-1986 to 4-8-1986. But she reported for duty only on 16-8-1986. However no action was taken by management. Again she took 30 days' leave from 30-3-1987 for going abroad. The bank granted 28 days' privilege leave that was at credit. She sought extension of leave for 19 days on sick ground and that was sanctioned up to 15-5-1987. Again she applied for 90 days' maternity leave from 27-7-1987 to 24-10-1987 with a request to go abroad. After that period she sought extension from 25-10-1987 to 9-1-1988. That was also granted by the bank. Again she sought extension of leave for 28 days from 18-2-1989 for going abroad and that was granted. Thereafter she sought extension of leave from 18-3-1989 to 16-4-1989 on the ground of illness. That was granted. Again she applied for maternity leave from 30-11-1989 to 27-2-1990 for 90 days. The bank took a lenient view and sanctioned leave. However she again sought extension of leave on medical ground up to 31-3-1990. That was not granted. The bank sent a telegram on 13-3-1990 and also a registered letter asking the claimant to report for duty immediately. She did not resume duty. Again a telegram and a letter were sent on 4-5-1990 and 8-5-1990 respectively. Still she did not report for duty. Another telegram was sent on 26-7-1990. There was no improvement. Again a letter was sent on 14-9-1990 asking to report for duty within 30 days from the date of the letter. On 9-10-1990 a telegram was also sent. But she joined duty only on 10-11-1990. Thus she was on leave for 345 days from 30-11-1989 to 9-11-1990. The leave from 30-11-1989 to 27-2-1990 was treated as maternity leave and absence from 28-2-1990 to 9-11-1990 was treated as unauthorized and on loss of pay. She was charge-sheeted for unauthorized absence. However she admitted the charge and hence the bank took a lenient view and stoppage of increment for two years without cumulative effect was imposed. Again she remained absent unauthorisedly from 2-4-1992 and went abroad without permission which is the subject matter of adjudication.

13. According to the claimant she had applied for leave and intimated the Branch Manager about her trip to Sultanate of Oman. Ext. ME2 is a letter dated 5-4-1992. It is sent from Trichur address. But it is mentioned that she wanted to proceed on privilege leave for 2 months from

2-4-1992 in order to join her husband in Muscat. The bank claims that this was received by bank only on 31-8-1992. However Ext. W6 marked in Court shows that the Staff Section of Canara Bank in a letter written to the claimant in the foreign address has admitted that the Branch Manager had received a letter from the claimant on 5-4-1992. But according to the bank this letter was only an intimation to the bank that she wanted to proceed to Sultanate of Oman. However even prior to that on 2-4-1992 she had already proceeded to Sultanate of Oman. It is also contended by the bank that for going abroad prior permission of Deputy General Manager is required. The Branch Manager is not competent to grant such permission. But no such request was made to the Deputy General Manager. Even Ext. ME2 was written only on 5-4-1992 after going abroad. No leave application is seen submitted to the bank for leave from 2-4-1992 to 2-6-1992. Going by Ext. ME5 dated 1-6-1992 she applied for 3 months' leave from 3-6-1992 only. It is also mentioned in the letter that she had joined her husband in Muscat on 2-4-1992. By Ext. ME7 telegram of 10-7-1992 she was asked to report for duty immediately as leave applied was not granted. She did not report for duty as instructed. Instead by Ext. ME4 letter she sought time till she would recover from her illness. Ext. ME4 is dated 12-7-1992. The Bank sent another telegram, Ext. ME8 on 19-8-1992 asking the claimant to report for duty immediately. She did not comply with the direction. She again sought medical leave from 2-9-1992 onwards for 3 months. The Bank sent a letter on 17-10-1992 asking her to report for duty within 30 days. The claimant acknowledged the letter and reported for duty on 30-10-1992. But she did not submit any medical certificate for availing the leave and also fitness certificate for joining duty. Hence her leave was treated as unauthorized and a charge-sheet, Ext. ME1 was issued to her on 14-12-1992. She submitted a reply to charge-sheet on 31-1-1993 from Sultanate of Oman. When the claimant was examined as WW1 she admitted that she had not sought prior permission for going abroad on 2-4-1992 (pg. 10). She has not been able to show that before proceeding on leave she had applied for leave to the concerned authority or even to the Branch Manager. Her application, Ext. ME2 could be treated as an application given to Branch Manager only on 5-4-1992. The Leave Rules and the Rules regarding foreign tour as mentioned in the written statement are not complied with by the claimant. Several times she was asked to report for duty. She did not comply. Several times she sought extension of leave without medical certificates. Thus the violation is glaring on the face of the record that she proceeded on leave without getting sanction of leave and without prior permission of the Deputy General Manager for going abroad. The instructions of the bank to report for duty on several occasions were not obeyed by the claimant. Even when she joined duty on 30-10-1992 she did not produce a medical certificate and a fitness certificate. Long absence of the claimant undoubtedly has affected the smooth functioning of the bank. Thus the allegations against her that she disobeyed the lawful and reasonable orders of superior officers and acted prejudicial to the interest of the bank, stand proved. I have already found that she was given enough opportunity to attend the enquiry, but remained absent throughout. The finding of

the Enquiry Officer is in order and is based on evidence and no interference is called for.

14. Point No. (2) :

The punishment imposed is dismissal from service. The misconduct alleged is falling under Chapter XI, Regulation 3, Clauses (d) & (m) of Canara Bank Service Code which are same as Para 19.5 (e) and (j) of 1st Bipartite Settlement. It is a major misconduct for which punishment is provided in Para 19.6. The Disciplinary Authority is free to impose any of the punishments mentioned in Para 19.6. Considering the past conduct of the claimant and the continuous absence and disregard for the instructions of the management warranted the punishment of dismissal. The claimant went on extending leave on one ground or other. The bank tolerated her conduct for quite sometime and took lenient view on many occasions. When the absence became frequent, long and unauthorized and directions of superiors fell on deaf ears the extreme step of dismissal had to be resorted to. Considering the circumstances and the conduct of the claimant she does not deserve a lenient view. Unless the punishment is shocking to the conscience of the court and disproportionate to the charges no interference by court is called for. No such circumstances arise in this case in order to interfere with the punishment.

15. In the result, an award is passed finding that the action of the management of Canara Bank in dismissing Smt. Elizabeth Davis from service w.e.f. 13-12-1994 is legal and justified and she is not entitled for any relief. The parties will suffer their respective costs. The award will take effect one month after its publication in the Official Gazette.

[Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 16th day of July, 2007].

P. L. NORBERT, Presiding Officer

APPENDIX

Witness for the Workman :

WW1 - Smt. Elizabeth Davis—24-6-2001.

Witness for the Management :

MW1 - Shri S. R. Shenoy—12-12-2000.

Exhibits for the Workman :

- W1 - Copy of letter dated 28-8-1993 sent by the workwoman to management.
- W2 - Photostat copy of reply sent by workwoman to management on 31-1-1993.
- W3 - Photostat copy of letter dated 1-6-1992 sent by workwoman to management.
- W4 - Photostat copy of letter dated 12-7-1992 sent by workwoman to management.

W5 - Photostat copy of letter dated 20-9-1992 sent by workwoman to management.

W6 - Photostat copy of letter dated 17-10-1992 issued by Asstt. General Manager to workwoman.

W7 - Photostat copy of Medical Certificate dated 2-11-1992 in r/o workwoman.

Exhibits for the Management :

M1 - Domestic Enquiry File.

M1(a) - Photostat copy of letter dated 17-10-1992 issued by Asstt. General Manager to workwoman.

M2 - Photostat copy of letter dated 7-7-1981 sent by workwoman to management.

M3 - Certified copy of claim statement dated 29-6-1998 filed by workwoman.

M4 - Certified copy of Vakalath dated 13-1-1997 executed by workwoman.

नई दिल्ली, 26 जुलाई, 2007

का. आ. 2349.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केनरा बैंक के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 7/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-7-2007 को प्राप्त हुआ था।

[सं. एल-12011/2/2003-आई आर (बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 26th July, 2007

S.O. 2349.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 7/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the Industrial Dispute between the management of Canara Bank and their workmen, which was received by the Central Government on 26-7-2007.

[No. L-12011/2/2003-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT

Shrikant Shukla, Presiding Officer

Misc. Case No. 7/2005

BETWEEN

Kailash Nath Khatri
S/o Late Ramji Khatri
R/o Tehsil Tundla, Eta Road,
District-Firozabad

AND

Dy. General Manager
Canara Bank
Circle Officer, Vipin Khand,
Gomti Nagar, Lucknow (U.P.)

AWARD

The workman's case in brief is that he was working as Armed Guard at Canara Bank Mall Road Branch, Kanpur w.e.f. 2-6-2001 to 10-6-2003. In another case of misconduct the Government of India, Ministry of Labour vide its order No. L-12011/2/2003-IR (B-II) dated 29-4-2003 referred the dispute to adjudicate upon the quantum of stoppage of two increments by the management of Canara Bank, Lucknow. The said reference order was registered as ID. No. 55/2003 on 30-5-2003. It is alleged that during the pendency of the said industrial dispute the management of the Canara Bank became annoyed and transferred him to the Bachgaon, Firozabad on 11-6-2003. The worker has therefore prayed that the transfer order be set aside and he may be transferred back to Kanpur where he was posted during pendency of the industrial dispute.

The opposite party filed the written statement. The opposite party has submitted that the subject matter of the dispute pending I.D. No. 55/2003 pertains to misconduct committed by the applicant during 1992 while working at Sald Mahadev Branch and the same is in no way related to his posting to Bachgaon branch. The workman was posted at Bachgaon branch on revocation of his suspension, while imposing the punishment in respect of chargesheet dated 27-9-2002 for his misconduct at Mall Road Branch, Kanpur during 2002. It is submitted that during the year 2002, the concerned workman was placed under suspension w.e.f. 2-8-2002 in contemplation of disciplinary action enquiry for misbehaviour with one Shri Prabodh Sharma, clerk while working at Mall Road Branch, Kanpur of Canara Bank. He was issued chargesheet dated 27-9-2002 and after completion of the departmental enquiry suitable punishment was imposed on him vide proceedings dated 5-6-2003 and in the same proceeding his suspension order was revoked with direction to him to report for duties at Bachgaon Branch. The subject matter of pending ID pertains to misconduct committed by the worker during 1992 while working at Sald Mahadev Branch and the same is in no way related to his posting to Bachgaon branch. It is also submitted that there is no change in the service condition as laid down in the Industrial Disputes Act, 1947. The workman could be transferred in any of the branch within the language areas in which he has been serving and transfer is an incident of service and cannot be said to be violative of any provisions of law nor can the said transfer be said to be prejudicial on account of lesser allowance.

The worker has not disputed the allegation of the management that on the disciplinary proceedings about the incident of the year 2002 he was placed under suspension and was chargesheeted for the same and after completion of departmental enquiry he was punished vide proceedings dated 5-6-2003 and in the same proceedings his suspension order was revoked with direction to him to report for duties at Bachgaon Branch.

The worker has examined himself and has stated that since he has retired and therefore, he does not want any relief from application under Section 33 A. He has admitted that the enquiry proceedings about the misbehaviour was in progress and after completion of the enquiry he was transferred at Bachgaon Branch of the Bank.

The opposite party has not produced any evidence.

Heard learned representatives of the worker.

The transfer of the worker from Kanpur to Firozabad does not amount to the violation of the service conditions of the worker. Moreover, the worker has stated that since he has retired from service no purpose will serve in allowing or refusing the application. In the circumstances the application is rejected.

Lucknow SHRIKANT SHUKLA, Presiding Officer
16-7-2007

नई दिल्ली, 26 जुलाई, 2007

का. आ. 2350.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केनरा बैंक के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलौर के पंचाट (संदर्भ संख्या 8/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-7-2007 को प्राप्त हुआ था।

[सं. एल-12012/264/1999-आई आर (बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 26th July, 2007

S.O. 2350.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 8/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the Industrial Dispute between the management of Canara Bank and their workmen, which was received by the Central Government on 26-7-2007.

[No. L-12012/264/1999-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated the 11th July, 2007

PRESENT

Shri A. R. Siddiqui, Presiding Officer

C. R. No. 08/2000

I PARTY:

Shri V. S. Sathyanarayana,
Vijayalakshmi Compound,
Preetchand Road,
Robertsonpet,
K.G.F.-563 122.

II PARTY :

The General Manager,
Canara Bank, Staff Section (Workmen),
Spencer Tower, J.C. Road,
Bangalore.

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-12012/264/99/IR (B-II) dated 2nd February, 2006 for adjudication on the following schedule :

SCHEDULE

"Whether the management of Canara Bank is justified in dismissing Shri V. S. Sathyanarayana, former Peon w.e.f. 30-6-1994 ? If not, to what relief the workman is entitled ?

2. The first party by way of his Claim Statement, challenged the enquiry proceedings as conducted against the principles of natural justice, findings of the enquiry officer suffering from perversity and the dismissal order passed against him as unjust and illegal (pleadings with regard to fairness or otherwise of the enquiry proceedings omitted there being a separate finding on domestic enquiry issue). At Para 6 of the claim statement, the first party contended that he was not sent with findings of the enquiry officer and even otherwise findings are totally perverse as no person could have held that the charges have been proved against the first party; that he being a Regional Committee member and Trade Unionist he has been victimised; that the punishment of dismissal even assuming for the sake of arguments without admitting the charges have been proved, is disproportionate amounting to victimisation and unfair labour practice; that he served the management satisfactorily for a period of 13 years without inviting any adverse remarks and his performance being appreciated on several occasions, dismissal order passed against him cannot be justified. Therefore, he requested this tribunal to set aside the dismissal order and to reinstate him in service with all consequential benefits.

3. The management by its Counter Statement asserted and maintained that principles of natural justice have been adhered to in conducting the enquiry proceedings. On merits it was contended that after the chargesheet in question was served upon the first party on 01-10-1992, he did not submit his explanation and therefore, enquiry was ordered and despite the enquiry notices were being served upon the first party and he being afforded with sufficient opportunity to attend and participate in the enquiry proceedings, he failed to participate in the proceedings and therefore, the management was constrained to produce evidence on its part in the enquiry held against the first party ex parte on 10-01-1994. Even, subsequent to 10-01-1994 sufficient opportunity was given to the first party to participate in the proceedings but he failed to do so. Therefore, the enquiry officer submitted his findings based on the oral and documentary evidence holding him guilty of the

charges. In the result, it cannot be said that the findings of the enquiry officer suffered from any perversity. The management contended that findings of the enquiry were sent to the first party by registered post, they were returned back with postal endorsement "Refused, returned to sender". Thereupon, opportunity of personal hearing was also given to the first party but he failed to avail the same. In the result, the proposed punishment of dismissal was confirmed dismissing the first party from the services. Therefore, the management requested this tribunal to dismiss the reference.

4. Keeping, in view the respective contentions of the parties with regard to the validity and fairness or otherwise of the enquiry proceedings, this tribunal on 06-04-2004 framed the following preliminary issue :

"Whether the Domestic Enquiry conducted against the first party by the second party is fair and proper ?"

5. During the course of trial of the said issue, the management examined the enquiry officer and got marked 24 documents at Ex. M1 to M24. The first party examined himself as WW1 and in his further examination chief got marked 3 documents at Ex. W1 to W3.

6. After having heard the learned counsels for the respective parties on the above said issue, this tribunal by order dated 04-04-2006 answered the same in favour of the management holding that enquiry conducted against the first party by the second party is fair and proper. Thereupon, the matter came to be posted to hear the parties on the point of alleged perversity of the findings and the quantum of the punishment. Learned counsel for the first party filed his written arguments and whereas, learned counsel for the management advanced his oral arguments.

7. Learned, counsel for the first party by his written arguments did not comment upon the oral and documentary evidence produced during the course of enquiry based on which charges were held to be proved against the first party. His main contention was that the document i.e. the Xerox copy of the letter at Ex. W3 produced by the first party before this tribunal must falsify the charges of misconduct levelled against the first party. He submitted that as per Ex. W3 which is the internal correspondence between the branch Manager and the Senior Manager, the closing balance as per the consolidation summary has been found to be incorrect and that has been corrected by the branch manager and he regretted for the inconvenience caused while enclosing the duplicate DD summaries and that shows that the charges of misconduct levelled against the first party as per the summaries produced during the course of enquiry vide Ex. M11 to M17 were false and incorrect. Learned counsel submitted that this letter at Ex. W3 though was with the management being issued on 19-07-1992 was held back during the course of enquiry and had it been produced, the truth would have come out and the misconduct alleged against the first party would have failed to be proved. His next argument was that first party being a trade unionist has been victimised though the management was quite kind and considerate in imposing lesser punishment in other cases. He also submitted that

punishment of dismissal was not proportionate keeping in view the unblemished 13 years of service rendered by the first party.

8. Whereas, learned counsel for the management argued that findings of the enquiry officer holding the workman guilty of the charges have been supported by valid and cogent reasonings in turn based on sufficient and legal evidence produced by the management and so also in the light of the very confession statement given by the first party admitting the misconduct committed by him, which letter he gave to the management witness MW4 who conducted the investigation into the matter. learned counsel further submitted that the oral as well as the documentary evidence produced in the enquiry has remained unchallenged and uncontroverted as the first party failed to participate in the proceedings, much less, the cross-examine the management witnesses or to deny the genuineness of the documents produced or to produce his own defence evidence to substantiate the stand taken by him. He submitted that the document at Ex. W3 now relied upon by the first party is an internal correspondence of consolidation summary nothing to do with the charges of misconduct levelled against the first party and that this document now cannot be considered for the reason that it was not produced during the course of enquiry and was not the subject evidence in the enquiry. He submitted that keeping in view the gravity of the misconduct committed by the first party, it was a case deserving extreme punishment of dismissal.

9. After having gone through the enquiry findings and evidence brought on record during the course of enquiry, I find substance in the arguments advanced for the management that charges of misconduct as such have been proved against the first party. A perusal of the enquiry findings would disclose that during the course of enquiry the management in all examined six witnesses and got marked 26 documents at Ex. M1 to M26. The management witness, MW1 now working as Branch Manager after having identified the documents at Ex. M1 to M18 including the 4 DDs in question deposed that these disputed DDs at Ex. M1 to M4 were not issued by the branch. The next witness examined was the then branch Manager, Ramamohan Reddy under whose signatures the DDs in question said to have been issued as per the stand taken by the first party, has deposed that all the four DDs were not signed by him though apparently they tallied with his signature. In fact, during the course of the proceedings his specimen signature was obtained by the enquiry officer in order to compare the signature found on DDs and the signature actually put by MW2 in his presence. The next witness examined for the management was the Sr. Manager of Shanthinagar branch and he identified his preliminary investigation report and also confirmed through his report that DDs have not been originated from Uthanur branch where the first party was working at the relevant point of time. MW4 was examined so as to prove the fact that the first party during the course of investigation conducted by him gave his letter dated 05-08-1992 admitting in clear words that he has given the DD for Rs. 13,850 for purchase of one ONIDA colour TV from Royal

Enterprises vide cash payment dated 16-12-1991 marked during the course of enquiry. He also stated that the proceeds of other three DDs were credited to SB Account of Smt. B. N. Sujatha, the wife of the first party. He stated that the first party stealthily removed those DDs wrote and forged the signature of Shri Mohan Reddy, the then Manager, Scale-1 of Uthanur Branch. MW5 has given the evidence to the effect that the first party during the course of investigation gave his written statement admitting the misconduct and he has attested the same as a witness. MW6, the Sr. Manager of KGF branch deposed to the effect that Shri B. N. Sujatha held SB Account No. 16654 opening the same with the branch on the introduction of the first party, while identifying the ledger sheet of SB account he confirmed that 3 DDs were paid into the SB account of this lady and one DD was paid to Royal Enterprises. He also testified to the effect that these were the DDs forged and were not issued by the Uthanur branch. This oral testimony of MW1 to MW6 and the documents referred by them during the course of their deposition as noted above, remained un-challenged and undisputed as unfortunately the first party did not turn up to attend and participate in the enquiry proceedings. Therefore, it is in the face of this oral and documentary evidence pressed into service by the Management in the enquiry and which has been discussed at length by the enquiry officer in coming to the conclusion that charges of misconduct have been proved against the first party, by no stretch of imagination it can be said that the findings submitted by him suffered from any sort of perversity. Those findings as could be read from the reasonings given in the body find support by oral and documentary evidence, that too, not controverted and challenged on behalf of the first party. As noted above, the learned council in his written arguments did not point out any factual or legal defect in the findings of the enquiry officer holding the workman guilty of the charges. It was not his case that there was no sufficient and legal evidence supporting the findings. The only contention he raised material and relevant for the purpose was that as per the above said letter at Ex. W3 there has been correction of the closing balance with reference to the DDs in question and that shows that the opening and closing balance furnished during the course of enquiry by way of documents at Ex. M11 to 17 were incorrect and false and therefore, first party cannot be held guilty of the charges. First of all, as argued for the management this letter at Ex. W3 cannot be considered by this tribunal as an evidence at this stage of the case keeping in view of the fact that enquiry proceedings conducted against the first party have been held to be proper. In the face of this finding this tribunal was required only to go into the oral and documentary evidence produced during the course of enquiry and to find out whether it was legal and sufficient to substantiate the charge of misconduct leveled against the first party. Unless the enquiry proceedings are set aside and the management is called upon to prove the charges of misconduct by way of fresh evidence, no fresh evidence as such can be produced by the first party in order to show that such an evidence will disprove the charges of misconduct found to be proved during the course of enquiry. That apart, as submitted for

the management the letter at Ex. W3 where under correction of closing balance as per consolidation summary was done is nothing to do with the charges of misconduct leveled against the first party. It was the internal correspondence between the Branch Manager and the Sr. Manager as far as figures pertaining to the closing balance with reference to the dates and the sums mentioned therein. Learned counsel for the first party did not elaborate by way of his argument as to how these figures of closing balance would have changed the situation in favour of the first party. The charge of misconduct as noted above, against the first party was that he stealthily removed the above said four DDs wrote by himself under his own handwriting and then forged those DDs by putting the signature of the then Manager and these allegations by way of chargesheet as noted above, have been proved by way of oral and documentary evidence supported by valid and cogent reasonings given by the enquiry officer. In the result, it must be held that charges of misconduct as leveled against the first party have been proved beyond any doubt.

10. Now coming to the quantum of the punishment. Though the management chargesheeted the first party in the manner narrated above, but there is no allegation of any misappropriation of the funds being done by the first party by manipulating the above said 4 DDs. Therefore, it is in this view of the matter, it appears to me that ends of justice will be met if the punishment of dismissal awarded against the first party is replaced by the order of Compulsory Retirement from his services. Accordingly, the reference is answered and the following award is passed :

AWARD

The impugned punishment of dismissal awarded against the first party is hereby modified by way of punishment of his Compulsory Retirement from services from the date of impugned punishment order. No costs.

(Dictated to PA transcribed by her corrected and signed by me on 11th July, 2007)

A.R. SIDDIQUI, Presiding Officer

नई दिल्ली, 26 जुलाई, 2007

का. आ. 2351.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इलाहाबाद बैंक के प्रबंधन के सम्बन्ध में निर्यातकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलौर के पंचाट (संदर्भ संख्या 100/1998) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-7-2007 को प्राप्त हुआ था।

[स. एल-12012/144/1998-आई आर (बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 26th July, 2007

S.O. 2351.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 100/1998) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure in the

Industrial Dispute between the management of Allahabad Bank and their workmen, which was received by the Central Government on 26-7-2007.

[No. L-12012/144/1998-IR (B-II)]
RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated the 18th July, 2007

PRESENT

Shri A. R. Siddiqui, Presiding Officer

C. R. No. 100/1998

I PARTY :

Shri D. N. Krishnappa,
Dandiganahalli village,
Karadahalli Post,
Nagamangala Taluk,
Mandya District,
Karnataka State

II PARTY :

The Regional Manager,
Allahabad Bank,
Regional Office,
No. 3-6-435, Main Road,
Himayath Nagar,
Hyderabad-560029

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-12012/144/98/IR (B-II) dated 4th December, 1998 for adjudication on the following schedule :

SCHEDULE

"Whether the management of Allahabad Bank is justified in terminating the services of Shri D. N. Krishnappa, Ex. Cashier incharge, and whether the enquiry conducted by the management of Allahabad Bank is in accordance with the principle of natural justice and legal ? If not, to what relief Shri D. N. Krishnappa is entitled to ?"

2. The case of the first party workman, as made out in the claim statement, in brief, is that initially he was appointed as a Peon Farash on 29-11-1976 and was promoted as a Clerk-cum-Cashier in the year 1983 and then he was promoted as Cashier Incharge in Category 'A'; that in the year 1984 and while he was working as category 'C' at Tumkur branch, he was dismissed from service despite he was rendering service with utmost sincerity and dedication; that on 09-12-1995 when he was working as cashier in Tumkur Branch, Allahabad Bank, at the end of closing cash transaction, the cash was tallied without there being no shortage. He and the branch manager being the joint custodian of the cash have signed the cash balance book as "checked and found correct". However, on

11-12-1995 when the office Inspector Shri M. T. Ninja from Zonal Office, Bombay came for inspection and reported that there was a shortage of Rs. 12,500 in the denomination of Rs. 100 and Rs. 50 10 each, which shortage pertained to 09-12-1995. He was kept under suspension on 12-12-1995. He contended that as on 09-12-1995, the cash balance at the end of the day was Rs. 5,08,866.01 and if any shortage or excess amount is found on the subsequent dates, then both the Head Cashier (first party) and the Manager should have been suspended. But the first party alone was victimised. A suspension order dated 12-12-1995 was passed on the allegation of shortage of Rs. 12,500 giving him 7 days time to give a reply. He gave reply to it on 21-01-1996 denying the allegations. However, strangely and in violation of the established rules, a corrigendum was issued on 12-02-1996, treating the above said Suspension Order as Chargesheet, which corrigendum was bad in law as suspension order could not have been converted as a chargesheet, that before issuing the chargesheet, an opportunity should have been given to him and that valuable right has been denied by issuing a corrigendum which cannot take the place of chargesheet. The first party then at Para 4(i), (ii) and (iii) of the Claim Statement has given certain instances to make his point that he has been victimised by the management in the instant case. At Paras 7 to 13 the first party challenged the validity of the enquiry proceedings. At Para 14, he contended that the Zonal Office Inspector ought to have come at the opening of the cash but he came at 1.30 P.M. and entered the cashier cabin at 3.30 P.M. without allowing the cashier to make packets of the notes of all denominations, tallying of cash receipts, cash payments and closing the cash as per the Bank norms and procedure. While touching the merits of the case he contended that since the Manager is also equally responsible for the cash balance inside the safe, his evidence cannot be relied and read against him. Moreover, one Shri Madhusudan Naik who attested the entry has not been examined. Therefore, he requested to this tribunal to set aside the impugned banishment order in terminating his services with a direction to the management to reinstate him in service with all consequential benefits.

3. The management by its counter statement not denying the fact that the first party was working as Category 'C' employee at Tumkur Branch and the fact that there was a surprise check made on 11-12-1995, with regard to the cash relating to 09-12-1995, contended that there was a shortage of Rs. 12,500 with regard to the cash balance taken place on 09-12-1995. The management also contended that on 11-12-1995 there was also a shortage of Rs. 7,000 at the close of the business hours on the said date. The management while admitting that the book balance on 09-12-1995 was found to be correct however, contended that that fact itself, does not ensure that the actual physical cash balances would tally with the said figure, as in the instant case. The management contended that the first party has deliberately certified on each such bundles of Rs. 100 and Rs. 50 denominations falsely and for that he alone can be held responsible. The management contended that the order of suspension was dated 18-10-1995 which was agreed upon the first party by way of registered post on

20-12-1995. The first party by his letter dated 26-12-1995 sought 30 days time to submit his explanation though was given 7 days time to do so. Therefore, the Disciplinary Authority ordered a departmental enquiry by order dated 09-01-1996 and his reply dated 21-01-1996, received, therefore, is of no consequence as enquiry was ordered on 09-01-1996 itself. The management contended that since the suspension order contained all the details of the charges, there was no need to issue a fresh charge sheet and so corrigendum was issued on 12-02-1996 to read the said suspension order as a Charge Sheet. The management denied the allegations that suspension order could not have been converted into a charge sheet and that by not issuing charge sheet the first party has been denied an opportunity to meet the same. The management denied the allegation of victimisation as made in Para 4 of the claim statement. The management also denied the allegation made in the claim statement with regard to the validity of the enquiry proceedings conducted by it and requested this tribunal to reject the reference.

4. Based on the respective contentions of the parties with regard to the validity and fairness or otherwise of the enquiry proceedings, this tribunal on 09-07-1999 framed the following preliminary issue :—

“Whether the second party proves that the Domestic Enquiry conducted against the first party was in accordance with the settled principle of law, Bipartite Settlement and principles of natural justice”?

5. It would appear from the records that during the course of trial of the said issue, the management examined one witness as MW1 and got marked 13 documents at Ex. M1 to M13. As a rebuttal, the first party also gave the evidence and my learned Predecessor after having heard the learned counsels for the respective parties, by order dated 13-08-2002, answered the said issue against the management holding that the enquiry held against the first is not fair and proper. Thereupon, the management was called upon to prove the charge of misconduct levelled against the first party and the management examined four witnesses as MW2 to MW5 and got marked documents at Ex. M14 to M25. The first party examined himself as WW1. The statement of MW2 which appears very much relevant for the purpose and with reference to the documents produced, in his examination chief is as follows :—

“During 1995 I was working as Manager at Tumkur. First party was working as cashier incharge at Tumkur. On 11-12-1995 at about 1.30 P.M. HO, Inspector had come to our branch for inspection. He came from Bombay. He wanted to check the cash. He kept the cash in safe. We opened the safe. Myself and first party opened the strong room and made available the cash for checking. I came out. Since first party was in the strong room. There was cash shortage of Rs. 100 pocket in five row. There was cash pockets. There was shortage—10 pieces in each pocket. In another packet there was shortage of 10 pieces in each packets of Rs. 50 denomination and total were 15 packets. This is the cash kept on 9-12-1995. He kept all the cash in sealed pockets and

signed myself and Inspecting Staff. Ex. M14 is the seal cover. Myself, Inspecting Officer and the first party signed M14 as M14(a), M14(b) is the signature of the first party. We closed the day's cash. There was again shortage of Rs. 7000. Spot Mahajar was drawn regarding shortage in the presence of all the staff members. First party confessed that he was taken the shortage cash and he will make good of it. Ex. M15 is the Mahajar drawn at the spot. First party prepared debit vouchers on 11-12-1995 and released on 12-12-1995. He has signed (first party) vouchers for Rs. 12,500 and second are for Rs. 7,000. Ex. M16 is the voucher for Rs. 12,500. It is signed by the first party as per Ex. M16(a). Next day first party deposited Rs. 7000 on 12-12-1995 as per Ex. M17 voucher. M17(a) is the signature of the first party. Ex. M18 is the letter given by the first party. Ex. M18(a) is his signature. He said he wants letter so that he will deposit balance amount. Thereafter he did not turn up at all. Ex. M19 is the cash book of that period. Ex. M19(a) is the entry of 9-12-1995. M19(b) is the entry of 11-12-1995. They were signatures of first party. Ex. M19(c) is the signature. Ex. M19(d) is my signature. M19(a)(1) is the signature of first party. M19(a)(2) is my signature. Ex. M19(a)(3) is the remarks of the Inspecting Officer. Ex. M19(a)(4) is his (officer's signature). Ex. M19(e) is the endorsement of the officer. M19(1) is his signature (officer). Ex. M20 is the letter's copy sent to the first party to deposit balance amount. Ex. M20 (a) is my signature. Next day first party sent leave (sick) application. On 23-12-1995 first party wrote letter denying every thing. It is at Ex. M21. First party's signature is at Ex. M21(a). On 11-12-1995 I reported matter to the Regional office, Hyderabad as per Ex. M22. M22(a) is my signature. Ex. M23 is the special report. Covering letter is Ex. M24. 24(a) is the signature of inspecting officer. We reversed the suspense entry of Ex. M17 and that is after depositing Rs. 7000. Ex. M25 is the concerned file consisting of all the material of this case including notices etc. First party was kept under suspension. He was dismissed after the enquiry. His appeal is also dismissed."

6. The next witness whose evidence relevant for the purpose is MW5 and his statement in examination chief is as under :—

"In 1995, I was posted at Bombay as Senior Inspector on 11-12-1995. I visited Tumkur Branch for Inspection. I checked cash at 1.30 P.M. after reaching on 1.15 P.M. First party was cashier in charge. There was a partial cash balance of two lakh seventy thousand pertaining to 09-12-1995. 10th was not a working day for the branch. I counted the cash balance. In 5 packets of 100 rupees denomination there was a shortage of 10 pieces in each packets, aggregating to Rs. 5,000. In 15 packets of Rs. 50 denomination there was shortage of 10 pieces in each packets aggregating to Rs. 7,500. Total shortage was Rs. 12,500. By that time it was 2.30 p.m. After 3.30 p.m. I counted cash at the counter dealt by the

workman. There was shortage of Rs. 7000 in the counter. I made enquiry with the first party and told him that he has to deposit the shortage. He promised that he would deposit on that day. We sealed all the bundle packets in the strong room in the cover obtaining the signature of the party Ex. M14 is that cover. It is signed by me and also by the first party. Ex. M14(c) is my signature. I party has signed at Ex. M14(b) and Manager at M14(a). On 12-12-1995 at 12.30 P.M. first party deposited only Rs. 7,000 under Ex. M17. Ex. M17(a) is the signature of the first party. Ex. M18 is the letter given by the workman duly signed by him. Ex. M18(a) is the signature. We prepared a debit voucher against the workman as per Ex. M16. I have given my report as per Ex. M10. My signature is at Ex. M10(a). First party was charge sheeted. Ex. M19 (a)(5) is my signature on the cash book. On 11-12-1995 also I have signed the cash book as per Ex. M19(f). Cash book is also signed by the workman. Ex. M19 (a)(6) is the signature of first party. Ex. M19 (g) is also signature of the workman."

7. The testimony of other three witnesses not relevant for the purpose need not be brought on record. I would like to come to the statements of MW2 & MW5 in their cross examination as and when found relevant and necessary. The statement of first party workman by way of affidavit evidence and his statement in cross examination will be referred to hereinafter, if found necessary.

8. The first and foremost argument advanced for the first party workman by learned Counsel, Shri V. S. Naik was that the oral and documentary evidence produced by the management before this tribunal after this tribunal set aside the Domestic Enquiry proceedings held against the first party cannot be found basis for any charge of misconduct said to be alleged by way of suspension order at Ex. M3 later on converted by way of charge sheet vide letter at Ex. M4. He contended that as per Clause 19.12 Chapter 19 of the Bipartite Settlement 1966, disciplinary action to be proposed against the delinquent shall proceed the charge sheet and not subsequent to the charge sheet. He contended that in the instant case first of all suspension order should not have been converted into the charge sheet and secondly, letter at Ex. M4 converting the same as a charge sheet should not have been issued after the disciplinary action was already proposed and initiated as has been done in the present case. He submitted that unless the charge sheet was issued giving the details along with the statement of imputation and the documents as well as list of the witnesses and explanation was obtained from the first party, disciplinary proceedings should not have been initiated. He submitted that in the instant case, first of all, the suspension order is very much vague with regard to the allegations of misconduct levelled against the first party and secondly, no explanation was called from him even after the suspension order was converted into charge sheet. He submitted that this tribunal while passing the orders on domestic enquiry issue, in no uncertain terms observed that the suspension order is not a charge sheet and therefore, the enquiry conducted against the first party in the absence of the charge sheet and the explanation

obtained from him was bad in law. He submitted that despite the above said observation the management has not come forward with any charge sheet so as to disclose what misconduct actually has been committed by the first party, as suspension order just disclosed the fact of shortage of certain amount which was being handled by the first party as a Cashier. On the point that any such suspension order or any show cause notice cannot be converted into charge sheet and that disciplinary action based on such charge sheet cannot be sustained in the eye of law, learned counsel relied upon the principle laid down by their Lordship of Supreme Court in a decision reported in 1993(II) LLJ page 303—*Delhi Development Authority Vs. H. C. Khurana*, 1989 (I) LLJ 573 of Andhra Pradesh High Court, 2000(7) SC 112 and a decision reported in 1989(4) SLR 763 of Rajasthan High Court and Clause 19.12(a) of the aforesaid Bipartite Settlement. On merits of the case the learned counsel submitted that as on 09-12-1995 the total cash balance at the end of the day was Rs. 5,08,866.01 and the first party and the Manager has jointly signed the relevant registers without there being any remark in the column concerned about the shortage of the amount. Therefore, any shortage or excess amount is found on the subsequent date the first party cannot be held responsible for the said shortage and even otherwise he cannot be held responsible alone as the Manager was equally responsible for such a shortage. With regard to the shortage of Rs. 7,000, learned counsel submitted that during the course of inspection of cash made on 11-12-1995 undisputedly cash transactions were being handled by some other staff namely Shri VRV Krishnan who handed over the cash back to the first party and therefore, for this shortage also the first party cannot be responsible.

9. Learned counsel for the management Shri Venkatesh representing Shri R. N. Vehemently argued that charges of shortage of the amount in question have been proved in the statements of MW2 & MW5 and the statement of the first party in his cross examination would make it abundantly clear that the cash in question was being handled by him as a cashier and during the course of inspection done by MW5 shortage of Rs. 12,500 was detected in the first instance and at the close of the business hours there was again shortage of Rs. 7,000 found. He contended that the first party, in fact, deposited a sum of Rs. 7,000 towards the shortage but failed to deposit the shortage amount of Rs. 12,500 despite a debit voucher was prepared against him. Learned counsel did not comment rather seriously with regard to the suspension order converting into the charge sheet, his only contention was that suspension order itself disclosed the misconduct committed by the first party and there was nothing more to be added by way of fresh charge sheet and therefore, it was thought unnecessary to issue a fresh charge sheet once again incorporating the very wordings incorporated in the suspension order. He submitted that there was nothing wrong committed by the management in converting the suspension order into a charge sheet.

10. After having gone through the records and the evidence brought on record as well as the decisions cited on behalf of the first party I find much substance in the

arguments advanced for the first party that suspension order at Ex. M3 could not have been first of all converted into a charge sheet. Clause 19.12 of the Bipartite Settlement, 1966 reads to the effect an employee against whom disciplinary action is proposed or likely to be taken shall be given a charge sheet. Their Lordship of Supreme Court in the aforesaid Delhi Development Authority's case held the view that charge sheet in a consequence to the decision to initiate disciplinary proceedings and that the decision to initiate the disciplinary proceedings cannot be subsequent to the issue of the charge sheet. It is further held that service of the charge sheet on the delinquent follows the decision to initiate the disciplinary proceedings and it does not proceed or coincide with that decision. In the decision of Andhra Pradesh High Court referred to supra it was held that the rule must specify the misconduct with precision as otherwise it will expose to grey area not amenable to objective evaluation. Their Lordship of Supreme Court in the aforesaid Kumaon Mondal Vikas case reported in 2000 (7) SC 112 have held the view that such an enquiry without issuing a charge sheet and holding the delinquent responsible is nothing but a method unknown to law in hottest of haste resulting into miscarriage of justice. Their Lordship further held that show cause notice which later came to be termed to be the chargesheet was prejudicial and biased resulting in total miscarriage of justice. Therefore, it is in the background of the principle laid down in the aforesaid decisions and clause 19.12 of the Bipartite Settlement one must appreciate the arguments advanced for the first party that Ex. 3, the suspension order before this court can never be read to be a charge sheet in the first instance and secondly, it is not in dispute that the suspension order came to be served upon the first party on 12-12-1995 and whereas, corrigendum was issued on 12-02-1996 converting the said suspension order as a charge sheet. It is not in dispute that the disciplinary authority ordered a departmental enquiry against the first party by order dated 09-01-1996 itself. Therefore, undisputedly, there was no charge sheet issued against the first party nor any explanation was called for from the first party on the said charge sheet as on 09-01-1996 when the Disciplinary Authority ordered departmental enquiry against the first party. Assuming for a moment, that suspension order can be read as a charge sheet, the corrigendum to the above effect admittedly was issued on 12-02-1996 i.e. long after the disciplinary action was initiated against the first party by order dated 09-01-1996. Therefore, first of all we cannot read the suspension order as a charge sheet as admittedly there was no opportunity given to the first party to give reply afresh after he was served with the said corrigendum. That apart, on the point as to whether the corrigendum should be read as a charge sheet or not, this tribunal while passing the order on Domestic Enquiry issue in no uncertain terms has recorded a finding to the effect that the suspension order at Ex. M3 cannot be termed as a charge sheet. The observation made by this tribunal at Para 10 of this order read as under :—

"In order to appreciate this contention, let us consider the available material. Ex. M3 is the Suspension Order. It appears that workman has given was termed as Charge Sheet vide letter Ex. M4.

I have read the decisions relied by the parties. It is well settled that either Suspension Order or the Show cause notice cannot be termed as Charge sheet. Apart from this, there is no proper explanation by the management as to why it has not issued separate charge sheet with imputation, list of documents and list of witnesses that it was not satisfied with the explanation given by the workman. This is all the irregularity committed by the enquiry officer. Definitely, this has caused prejudice to the workman. It is an admitted fact that the enquiry was completed in a span of 3 days. Considering all this, I am of the opinion that the enquiry is not fair and proper."

11. As noted above, their Lordship of Supreme Court in the aforesaid Delhi Development Authority case have made it abundantly clear that a decision to initiate disciplinary proceedings cannot be subsequent to the issue of the charge sheet as the charge sheet is a consequence to the decision to initiate disciplinary proceedings. In the instant case as noted above, before the aforesaid suspension order could have been converted into charge sheet by order dated 12-02-1996, the disciplinary authority ordered DE against the first party on 09-01-1996 itself. Therefore, viewed from any angle the suspension order at Ex. M3 before this tribunal cannot be termed as a charge sheet first of all and secondly, the proceedings initiated against the first party by the disciplinary authority cannot be sustained in the eye of law they being earlier to the issue of the charge sheet. The law requires that a charge sheet first be served upon the delinquent concerned calling upon him to submit his explanation and in case his explanation is not found satisfactory, the Disciplinary Authority will be obliged rather justified in proceedings ahead in holding a departmental enquiry. In the instant case undisputedly, it was not done. Therefore, the present proceedings before this tribunal being in continuance of the proceedings conducted by the Disciplinary Authority cannot be first of all sustained in the eye of law, in the light of the aforesaid Clause 19.12 of the Bipartite Settlement 1966 and in view of the principle laid down by their Lordships in the decisions quoted above.

12. Now, assuming for a moment that above said suspension order at Ex. M3 can be read to be a charge sheet at Ex. M4, let us find out what is the misconduct as such committed by the first party workman. Suspension Order dated 12-12-1995 reads as under :—

"It has been reported that while posted and functioning as C.I.C. "C" category of Tumkur Branch you have committed the following acts of omission/ commission.

On 11-12-1995 at about 1.30 P.M. when the branch officials checked the cash of previous day's balance they found cash shortage of Rs. 12,000 in the following denominations :

Denomination	No. of Sections	Pieces of Shortage	Total Amount
Rs. 100	5	10 each	Rs. 5,000
Rs. 50	15	10 each	Rs. 7,500
Total amount of shortage			Rs. 12,500

All the above sections were signed, stitched and sealed by you. Also when the branch officials checked the closing cash balance of 11-12-1995 they found also a cash shortage of Rs. 7,000. Hence altogether there was a cash shortage of Rs. 19,500. Your aforesaid acts of omission and commission constitute gross misconduct in terms of clause 19.5(j) of Bipartite Settlement and attract disciplinary action against you and your continuance of the branch is not considered in the interest of the bank and therefore, pending enquiry into the acts of omission and commissions on your part. You are hereby placed under suspension with immediate effect. You are advised to send your explanation, if any, within 7 days of receipt of this letter.

Please note that no leave shall be granted to you during the period of your suspension. You shall not leave the station without prior permission of the competent authority/disciplinary authority. You will also not enter the Tumkur Branch without written permission of the Branch Manager.

During the period of your suspension, you will be paid subsistence allowance in terms of Regulations of Bipartite Settlement. Please acknowledge receipt."

13. Therefore, from the reading of the above said suspension order the allegation made against the first party appears to be that as a Cashier he signed the relevant documents stitched and sealed the currency notes. With regard to the closing cash balance as on 09-12-1995 and that when the said cash balance was checked on 11-12-1995, there was a shortage of Rs. 19,500, it is alleged that when the inspection was done at about 1.30 p.m. of the cash of the previous day's balance i.e. of 09-12-1995 the Inspector (MW5) who checked the balance, found cash shortage of Rs. 12,500 in the denomination of Rs. 100 and Rs. 50 and when the closing cash balance of 11-12-1995 was checked there was a cash shortage of Rs. 7,000. The fact that the first party was working as a cashier on 09-12-1995 and then on 11-12-1995 (10-12-1995 was Sunday) has not been disputed by the first party and cannot be disputed by him as the stand taken by him is only to the effect that for the closing cash balance as on 09-12-1995, he alone cannot be held responsible as the relevant registers and documents speaking to the said cash balance have not only been signed by him but also have been signed by the then Manager after due verification of the cash balance on hand as on that day. With regard to the shortage of Rs. 7,000 at the close of the day on 11-12-1995 he took the stand to say that during the course of inspection being done by MW5, he was kept away from cash dealing and cash transactions were being dealt with some other staff of the bank and therefore, he cannot be held responsible for the shortage also. It is to be noted that not a single suggestion was made to MW5 in his cross examination disputing the fact of shortage amount of Rs. 12,500 found with respect of the closing balance recorded on 09-12-1995. He also did not dispute the fact of the checking of the cash by MW5 and the fact that there was shortage of Rs. 12,500. There is again no suggestion made to MW5 to the effect that at the close of the day,

11-12-1995 once again the cash was checked and there was a shortage of Rs. 7,000 found. In fact it is on record that the first party deposited a sum of Rs. 7,000 as per the challan dated 12-12-1995 marked before this tribunal at Ex. M17(a). With respect of the shortage of Rs. 12,500 there was debit voucher passed in the name of the first party as per Ex. M16 and signed by him at Ex. M16(a) on a promise made by him that he will make good of the said shortage amount on the next day but he did not do so. The first party, in fact, in his claim statement has never referred and disputed the fact of shortage of Rs. 7,000 found at the close of the business hours on 11-12-1995. With regard to the shortage of Rs. 12,500 the first party in his cross examination was unable to say if during the course of inspection 10 notes of 100 rupees denomination were found missing from the five packets of 100 rupees denomination and likewise 10 notes of Rs. 50 denomination were found missing from each of 15 packets. He admitted that in his presence those notes were counted and were kept in separate cover and the cover was sealed. Therefore, the factum of shortage of sum of Rs. 19,500 found during the course of inspection made by MW5 in fact has not been disputed by the first party either in positive words or by way of denial to suggestion made to him in his cross examination. The arguments advanced for the first party that he alone cannot be made responsible for the shortage of Rs. 12,500 with respect to the closing of cash balance on 09-12-1995, as the manager was also in joint custody of the cash balance and signatory to all the relevant registers speaking to the fact that the cash balance at the close of the business hours on 09-12-1995 kept in the safe was true and correct as per the actual verification done by both of them. It may be that the Manager who is undisputedly, the joint custodian of the cash balance, along with the first party was also negligent or responsible for the shortage of Rs. 12,500 took place when the case was checked on 11-12-1995 pertaining to the closing cash balance on 09-12-1995 but only because the manager is also responsible for such a shortage, the first party cannot disown or shirk his responsibility with regard to the said shortage when he was the cashier mainly responsible for the cash custody as on 09-12-1995 and as on 11-12-1995. Whether the manager is also held responsible, or not, or any action has been taken against him by the management, is of no concern for this tribunal. We have to only see whether the first party can be held responsible for the shortage found during the course of inspection done by MW5 as on 11-12-1995 and as noted above, this fact not only has not been disputed by the first party but also has been proved by way of the various documents and the statement of MW2 more particularly, in the statement of MW5, the Inspector who checked and inspected the cash balance in question.

14. Now, going by the wordings of suspension order, so to say the charge sheet. There is no specific allegation made against the first party to the effect that he misappropriated atleast, temporarily the aforesaid amount of Rs. 19,500. The allegation is that it was a grave misconduct in terms of Clause 19.5(j) of the Bipartite

Settlement under which his continuance was not considered in the interest of the bank. Article 41 of Manual of Security & Fire Fighting reads as under :

“Any shortage in the cash balance, however occasioned, should be recovered the same day, if possible. Failing recovery the same day, the amount must be debited to Suspense Account under advice to Head Office”

15. Therefore, from the reading of the said provision it gets very much clear that if any shortage in the cash balance is occasioned for any reason whatsoever, that shortage amount has to be recovered on the same day, if possible, and in case, it was not recovered on the same day the amount must be debited to the suspense account under advice to head office. As noted above, the first party had already deposited a sum of Rs. 7000 towards the shortage and passed debit voucher with respect to the shortage of Rs. 12,500 but failed to remit the said amount. Therefore, keeping in view the evidence brought on record, there cannot be any hesitation in the mind of this tribunal to come to the conclusion that the shortage of Rs. 19,500 found during the course of inspection by MW5 with respect to the closing of cash balance on 09-12-1995 and shortage of Rs. 7000 found with respect to the cash balance at the close of the day on 12-12-1995 was as a result of the negligence on the part of the first party. As noted above, there is no allegation in the said suspension order that the first party misappropriated the amount and therefore, he can at the most be held responsible for an act of negligence in dealing with the cash which was in his custody as on 09-12-1995 and as on 11-12-1995. If we hold the first party responsible for the act of negligence, then the punishment imposed by the management removing him from service for such a misconduct appears to be highly excessive and disproportionate to the gravity of the misconduct committed by him. In the result, having regard to the facts and circumstances of the case, it appears to me that ends of justice will be met, if the first party is imposed with the punishment of withholding of his four annual increments from the date of punishment order denying him 50 per cent of the back wages from the date of the punishment order till the date of his reinstatement. Hence the following Award :

AWARD

The Management is directed to reinstate the first party workman into its services with 50 per cent of the back wages withholding his four annual increments with cumulative effect from the date of the punishment order. The amount already paid to the first party workman by way of Interim Relief shall be taken into consideration while making payment of 50 per cent of the back wages to the first party. No costs.

(Dictated to PA transcribed by her corrected and signed by me on 18th July, 2007)

A. R. SIDDIQUI, Presiding Officer

नई दिल्ली, 30 जुलाई, 2007

का. आ. 2352.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 140/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-7-2007 को प्राप्त हुआ था।

[सं. एल-12012/402/1998-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 30th July, 2007

S.O. 2352.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 140/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, which was received by the Central Government on 30-7-2007.

[No. L-12012/402/1998-IR (B-I)]
AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

K. Jayaraman, Presiding Officer

Industrial Dispute No. 140/2004

(Principal Labour Court CGID No. 138/99)

[In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

BETWEEN

Sri R. Alphones : I Party/Petitioner

AND

The Assistant General : II Party/Management
Manager,
State Bank of India,
Region-I,
Trichirappalli.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative

For the Management : M/s. K. S. Sundar, Advocates

AWARD

The Central Government, Ministry of Labour vide Order No. L-12012/402/98-IR(B-I) dated 11-2-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 138/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 140/2004.

2. The Schedule mentioned in that order is as follows:—

“Whether the demand of the workman Shri R. Alphones wait list No. 646 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Tennur branch from 6-9-1982. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Tennur branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 6-9-1982, the Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working on temporary basis in Kamarajapuram

branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G and 25H of the I.D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I. D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank.

The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-7-88, 7-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 646 in wait list of Zonal Office, Trichy. So far 212 wait listed temporary candidates, out of 652 waitlisted temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 652 wait listed candidates, 212 temporary employees were appointed and since the Petitioner was wait listed at 646 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements

of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W. P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

(i) "Whether the demand of the Petitioner in Wait List No. 646 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"

(ii) "To what relief the Petitioner is entitled?"

Point No. 1 :

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner

working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB and IC 2248 Central Bank of India Vs. S. Satyam and Others the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B and C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he

deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so-called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W. P. No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 and 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No. 11932/91 in W. P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these Petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or

after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2(oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H. D. Singh Vs. Reserve Bank of India and Others wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W. P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence

of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under section 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I. D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I. Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation wherein the Supreme Court has held that the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. It is further argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned Senior Counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger.

Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 Associated Glass Industries Ltd. Vs. Industrial Tribunal A.P. and Others wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 ILLJ 1189 Ashok and Others Vs. Maharashtra State Transport Corporation and Others wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. Ltd. Vs. Presiding Officer and Others wherein the Supreme Court has held that "settlement are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 National Engineering Industries Ltd. Vs. State of Rajasthan and Others wherein

the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned Counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 Secretary, Kollam Jilla Hotel and Shop Workers Union Vs. Industrial Tribunal, Kollam wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 Van Sagnathan Orient Paper Mills Vs. Industrial Tribunal & Ors. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not

mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. Sambanthan Vs. Presiding Officer, Labour Court, Madras, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 Union of India and Others Vs. K. V. Vijeesh wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. Service in an existing or a future vacancy". In that case, Pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in

1997 6 SCC 584 Syndicate Bank & Ors. Vs. Shankar Paul and Others wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 Shankarsan Dash Vs. Union of India wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 State of Haryana and Ors. Vs. Piara Singh and Others wherein the Supreme Court has held that "now coming to the direction that all those ad hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other

relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable." Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 Ashwani Kumar and Others Vs. State of Bihar and Others wherein the full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 Himanshu Kumar Vidyarthi & Ors. Vs. State of Bihar and Ors. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come—first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Anyhow, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 Secretary, State of Karnataka Vs. Uma Devi, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 National Fertilizers Ltd. and Others Vs. Somvir Singh, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 Municipal Council, Sujapur Vs. Surinder Kumar, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 Madhya Pradesh State Agro Industries Development Corporation Vs. S.C. Pandey wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the

subsequent decisions of this Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore.”

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim

regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled ?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open Court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :

For the Petitioner : WW1 Sri R. Alphonse

WW2 Sri V. S. Ekambaram

For the Respondent : MW1 Sri C. Manojappan

MW2 Sri T. L. Selvaraj

Documents Marked :

Ex. No.	Date	Description
W1	01-08-88	Xerox copy of the paper publication in daily <i>Thanthi</i> based on Ex. M1.
W2	20-04-88	Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1.
W3	24-04-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.
W4	01-05-91	Xerox copy of the advertisement in <i>The Hindu</i> on daily wages based on Ex. W4.
W5	20-08-91	Xerox copy of the advertisement in <i>The Hindu</i> extending period of qualifying service to daily wagers.
W6	15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts.
W7	25-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.

Ex. No.	Date	Description
W9	23-08-88	Xerox copy of the service certificate issued by Tennur branch.
W10	26-08-92	Xerox copy of the service certificate issued by Kamarajapuram branch.
W11	18-6-93	Xerox copy of the service certificate issued by Tennur branch.
W12	29-09-93	Xerox copy of the service certificate issued by Ramalinga Nagar branch.
W13	18-08-94	Xerox copy of the service certificate issued by Ramalinga Nagar branch.
W14	09-02-98	Xerox copy of the service certificate issued by Kamarajapuram branch.
W15	09-02-98	Xerox copy of the service certificate issued by Kamarajapuram branch.
W16	16-02-98	Xerox copy of the service certificate issued by Palakkarai branch.
W17	18-02-98	Xerox copy of the service certificate issued by Tennur branch.
W18	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate care and service conditions.
W19	Nil	Xerox copy of the Vol. III of Reference book on Staff matters upto 31-12-95.
W20	06-03-97	Xerox copy of the call letter from Madurai Zonal Office. For interview of messenger post—V. Muralikannan.
W21	06-03-97	Xerox copy of the call letter from Madurai Zonal Office. For interview of messenger post—K. Subburaj.
W22	06-03-97	Xerox copy of the call letter from Madurai Zonal Office. For interview of messenger post—J. Velmurugan.
W23	17-03-97	Xerox copy of the service particulars—J. Velmurugan.
W24	26-03-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi.
W25	31-03-97	Xerox copy of the appointment order to Sri G. Pandi.
W26	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle.
W27	13-02-95	Xerox copy of the Madurai Module circular letter about engaging temporary employees from the panel of wait list.
W28	09-11-92	Xerox copy of the Head Office circular No. 28 regarding norms for sanction of messenger staff.

Ex. No.	Date	Description
W29	09-07-92	Xerox copy of the minutes of the Bipartite meeting.
W30	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants.
W31	07-02-06	Xerox copy of the local Head Office circular about conversion of part time employees and redesignate them as general attendants.
W32	31-12-85	Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre.

For the Respondent/Management :

Ex. No.	Date	Description
M1	17-11-87	Xerox copy of the settlement.
M2	16-07-88	Xerox copy of the settlement.
M3	27-10-88	Xerox copy of the settlement.
M4	09-01-91	Xerox copy of the settlement.
M5	30-07-96	Xerox copy of the settlement.
M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
M7	28-05-91	Xerox copy of the order in W.P. No. 7872/91.
M8	15-05-98	Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa.
M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M10	Nil	Xerox copy of the wait list of Trichy Module.
M11	25-10-99	Xerox copy of the order passed in CMP Nos. 16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 30 जुलाई, 2007

का. आ. 2353.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 18/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-7-2007 को प्राप्त हुआ था।

[सं. एल-12012/294/1998-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 30th July, 2007

S.O. 2353.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 18/2004) of the Central Government Industrial Tribunal-cum-Labour

Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, which was received by the Central Government on 30-7-2007.

[No. L-12012/294/1998-IR (B-I)]
AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT

K. Jayaraman, Presiding Officer

Industrial Dispute No. 18/2004

(Principal Labour Court CGID No. 36/99)

[In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

BETWEEN

Sri P. Jayabal : I Party/Petitioner

AND

The Assistant General : II Party/Management
Manager,
State Bank of India,
Zonal Office,
Coimbatore

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram
Authorised Representative

For the Management : M/s. K. S. Sundar, Advocates

AWARD

The Central Government, Ministry of Labour vide Order No. L-12012/294/98-IR(B-I) dated 2-2-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 36/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I. D. No. 18/2004.

2. The Schedule mentioned in that order is as follows :—

“Whether the demand of the workman Shri P. Jayabal wait list No. 275 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Ammapettai branch from 22-2-1982. During 1985-86, the Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Ammapettai branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 22-2-1982, the Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working as such, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working at Bhavani branch, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner. he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner

was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G and 25H of the I. D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I. D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-7-88, 7-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 285 in waitlist of Zonal Office, Coimbatore. So far 211 wait listed temporary candidates, out of 705 waitlisted temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger.

The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 705 wait listed candidates, 211 temporary employees were appointed and since the Petitioner was wait listed at 285, he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by

employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workman with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W. P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

- (i) "Whether the demand of the Petitioner in Wait List No. 275 for restoring the wait list of temporary messenger in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is entitled?"

Point No. 1 :

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to

protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB and IC 2248 Central Bank of India Vs. S. Satyam and Others the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the

avermments of MW1 and MW2 and their testimonies during the cross examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B and C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so-called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W. P. No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated

by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 and 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No. 11932/91 in W. P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these Petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2(o) of the I. D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H. D. Singh Vs. Reserve Bank of India and Other wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter

violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 and W. P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under section 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I. D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I. Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they

were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc". It is further argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned Senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the Federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 Associated Glass Industries Ltd. Vs. Industrial Tribunal A.P. and Others wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or

coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 ILLJ 1189 Ashok and Others Vs. Maharashtra State Transport Corporation and Others wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 ILLJ 308 K.C.P. Ltd. Vs. Presiding Officer and Others wherein the Supreme Court has held that "settlement are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 National Engineering Industries Ltd. Vs. State of Rajasthan and Others wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned Counsel for the Respondent further contended that though the reference made in this case and

other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 Secretary, Kollam Jilla Hotel and Shop Workers Union Vs. Industrial Tribunal, Kollam wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 Van Sagnathan Orient Paper Mills Vs. Industrial Tribunal & Ors. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. Sambanthan Vs. Presiding Officer, Labour Court, Madras, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this

Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 *Union of India and Others Vs. K. V. Vijeesh* wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. Service in an existing or a future vacancy". In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 *Syndicate Bank & Ors. Vs. Shankar Paul and Others* wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 *Shankarsan Dash Vs. Union of India* wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no

right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 *State of Haryana and Ors. Vs. Piara Singh and Others* wherein the Supreme Court has held that "now coming to the direction that all those ad hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door, (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 *Ashwani Kumar and Others Vs. State of Bihar and Others* wherein the full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a

still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 Himanshu Kumar Vidyarthi & Ors. Vs. State of Bihar and Ors. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come—first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Anyhow, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 Secretary, State of Karnataka Vs. Uma Devi, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities

and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. it has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 National Fertilizers Ltd. and Others Vs. Somvir Singh, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 Municipal Council, Sujampur Vs. Surinder Kumar, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 Madhya Pradesh State Agro Industries Development Corporation Vs. S.C. Pandey wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decision, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under

such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled ?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open Court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :

For the Petitioner : WW1 Sri P. Jayapal

WW2 Sri V. S. Ekambaram

For the Respondent : MW1 Sri C. Mariappan

MW2 Sri S. Srinivasan

Documents Marked :

Ex. No.	Date	Description
W1	01-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W2	20-04-88	Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1.
W3	24-04-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.
W4	01-05-91	Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4.
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers.
W6	15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts.
W7	25-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.
W9	Nil	Xerox copy of the service certificate issued by Ammapettai branch.
W10	14-10-97	Xerox copy of the service certificate issued by Bhavani branch.
W11	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate care and service conditions.
W12	Nil	Xerox copy of the Vol. III of Reference book on Staff matters upto 31-12-95
W13	06-03-97	Xerox copy of the call letter from Madurai Zonal Office. For interview of messenger post—V. Muralikannan.
W14	06-03-97	Xerox copy of the call letter from Madurai Zonal Office. For interview of messenger post—K. Subburaj.

Ex. No.	Date	Description
W15	06-03-97	Xerox copy of the call letter from Madurai Zonal Office. For interview of messenger post—J. Velmurugan.
W16	17-03-97	Xerox copy of the service particulars—J. Velmurugan.
W17	26-03-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi.
W18	31-03-97	Xerox copy of the appointment order to Sri G. Pandi.
W19	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle.
W20	13-02-95	Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list.
W21	09-11-92	Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff.
W22	09-07-92	Xerox copy of the minutes of the Bipartite meeting.
W23	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants.
W24	07-02-06	Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants.
W25	31-12-85	Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre.

For the Respondent/Management :

Ex. No.	Date	Description
M1	17-11-87	Xerox copy of the settlement.
M2	16-07-88	Xerox copy of the settlement.
M3	27-10-88	Xerox copy of the settlement.
M4	09-01-91	Xerox copy of the settlement.
M5	30-07-96	Xerox copy of the settlement.
M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
M7	28-05-91	Xerox copy of the order in W.P. No. 7872/91.
M8	15-05-98	Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa.
M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.

Ex. No.	Date	Description
M10	Nil	Xerox copy of the wait list of Coimbatore Module.

M11	25-10-99	Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99.
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नई दिल्ली, 30 जुलाई, 2007

का. आ. 2354.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 17/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-7-2007 को प्राप्त हुआ था।

[सं. एल-12012/296/1998-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 30th July, 2007

S. O. 2354.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 17/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, which was received by the Central Government on 30-7-2007.

[No. L-12012/296/1998-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**

Wednesday, the 31st January, 2007

PRESENT**K. Jayaraman, Presiding Officer****Industrial Dispute No. 17/2004****(Principal Labour Court CGID No. 35/99)**

[In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

BETWEEN

Sri P. Jayakannan : I Party/Petitioner

AND

The Assistant General : II Party/Management
Manager,
State Bank of India,
Zonal Office,
Coimbatore.

APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,
Authorised Representative.

For the Management : M/s. K. S. Sundar, Advocates

AWARD

The Central Government, Ministry of Labour vide Order No. L-12012/296/98-IR(B-I) dated 2-2-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 35/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I. D. No. 17/2004.

2. The Schedule mentioned in that order is as follows:—

“Whether the demand of the workman Shri P. Jayakannan, wait list No. 411 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Mettupalayam branch from 23-8-80. During 1985-86 the Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of Mettupalayam branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed

orally to join at the branch where he initially worked as a class IV employee. From 23-8-1980, the Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working as such, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working at Mettupalayam branch, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G and 25H of the I. D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise.

The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I. D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-7-88, 7-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under section 18(3) of I. D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was waitlisted as candidate No. 410 in waitlist of Zonal Office, Coimbatore. So far 211 wait listed temporary candidates, out of 705 waitlisted temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorized as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements out of 705 wait listed candidates, 211 temporary employees were appointed and since the Petitioner was wait listed at 410, he was not appointed. The said settlements

were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W. P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the

Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

- (i) "Whether the demand of the Petitioner in Wait List No. 411 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the

Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB and IC 2248 Central Bank of India Vs. S. Satyam and Others the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B and C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared

based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W. P. No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belong to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 and 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No. 11932/91 and W. P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended to behalf of the Petitioner that though the Respondent/Bank has alleged that these

petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2(oo) of the I. D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H. D. Singh Vs. Reserve Bank of India and Others wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 and W. P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank

has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I. D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I. Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc.". It is further argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned Senior Counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I. D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he

was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 Associated Glass Industries Ltd. Vs. Industrial Tribunal A.P. and others wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 1189 Ashok and Others Vs. Maharashtra State Transport Corporation and Others wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. Ltd. Vs. Presiding Officer and Others wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the

contesting workmen also.” He further relied on the rulings reported in AIR 2000 SC 469 National Engineering Industries Ltd. Vs. State of Rajasthan and Others wherein the Supreme Court has held that “settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable.” Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is ‘whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?’ The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 Secretary, Kollam Jilla Hotel and Shop Workers Union Vs. Industrial Tribunal, Kollam wherein the Kerala High Court has held that “mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again.” It further held that “the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits.” Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 Van Sagnathan

Orient Paper Mills Vs. Industrial Tribunal & Ors. wherein the Madhya Pradesh High Court has held that “the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties.” He also relied on the rulings reported in 1998 LAB IC 1507 A. Sambanthan Vs. Presiding Officer, Labour Court, Madras, wherein it has been held that “it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner.” He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that “the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court.” Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 Union of India and Others Vs. K. V. Vijeesh wherein the Supreme Court has held that “the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy. In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that “in such

circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 *Syndicate Bank & Ors. Vs. Shankar Paul and Others* wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 *Shankarsan Dash Vs. Union of India* wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 *State of Haryana and Ors. Vs. Piara Singh and Others* wherein the Supreme Court has held that "now coming to the direction that all those ad hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and

subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 *Ashwani Kumar and Others Vs. State of Bihar and Others* wherein the full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 *Himanshu Kumar Vidyarthi & Ors. Vs. State of Bihar and Ors.* wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come—first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Anyhow, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the

Petitioner and therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 Secretary, State of Karnataka Vs. Uma Devi, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. it has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 National Fertilizers Ltd. and Others Vs. Somvir Singh, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 Municipal Council, Sujapur Vs. Surinder Kumar, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in a sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 Madhya Pradesh State Agro Industries Development Corporation Vs. S.C. Pandey wherein the Supreme Court has held that "only because an employee had worked for more than 240 days

of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decision, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar case, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy

decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled ?

20. In view of my foregoing findings that the petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :

For the Petitioner : WW1 Sri P. Jayakannan
WW2 Sri V. S. Ekambaram

For the Respondent : MW1 Sri C. Mariappan
MW2 Sri S. Srinivasan

Documents Marked :

Ex. No.	Date	Description
W1	01-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W2	20-04-88	Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1.
W3	24-04-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.
W4	01-05-91	Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4.
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers.
W6	15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messengers posts.
W7	25-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.

Ex. No.	Date	Description
W8	Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.
W9	10-03-81	Xerox copy of the service certificate issued by Mettupalayam branch.
W10	22-08-88	Xerox copy of the service certificate issued by Mettupalayam branch.
W11	Nil	Xerox copy of administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate care & service conditions.
W12	Nil	Xerox copy of the Vol. III of Reference book on Staff matters upto 31-12-95.
W13	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan.
W14	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj.
W15	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan.
W16	17-03-97	Xerox copy of the service particulars—J. Velmurugan.
W17	26-03-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi.
W18	31-03-97	Xerox copy of the appointment order to Sri G. Pandi.
W19	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle.
W20	13-02-95	Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list.
W21	09-11-92	Xerox copy of the Head Office Circular No. 28 regarding norms for sanction of messenger staff.
W22	09-07-92	Xerox copy of the minutes of the Bipartite meeting.
W23	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India State Bank of India Staff Federation for implementation of norms—creation of part time general attendants.
W24	07-02-06	Xerox copy of the local Head Office circular about conversion of part time employees and redesignate them as general attendants.

Ex. No.	Date	Description
W25	31-12-85	Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre.

For the Respondent/Management :

Ex. No.	Date	Description
M1	17-11-87	Xerox copy of the settlement.
M2	16-07-88	Xerox copy of the settlement.
M3	27-10-88	Xerox copy of the settlement.
M4	09-01-91	Xerox copy of the settlement.
M5	30-07-96	Xerox copy of the settlement.
M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
M7	28-05-91	Xerox copy of the order in W.P. No. 7872/91.
M8	15-05-98	Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa.
M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M10	Nil	Xerox copy of the wait list of Coimbatore Module.
M11	25-10-99	Xerox copy of the order passed in CMP No. 16289 & 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 31 जुलाई, 2007

का. आ. 2355. — औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ बड़ोदा के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय नं.-2, नई दिल्ली के पंचाट (संदर्भ संख्या 40/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-7-2007 को प्राप्त हुआ था।

[सं. एल-12011/24/2005-आई आर (बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 31st July, 2007

S. O. 2355.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 40/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, New Delhi as shown in the Annexure, in the Industrial Dispute between the management of Bank of Baroda and their workmen, which was received by the Central Government on 27-7-2007.

[No. L-12011/24/2005-IR (B-II)]
RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Shri R. N. Rai, Presiding Officer

I. D. No. 40/2005

PRESENT

Shri T. B. Singh : 1st Party

Shri T. C. Gupta : 2nd Party

In the matter of :

Shri Pawan Kumar,
Vill and Post : Pali,
Tehsil : Dadri,
District : Gautambudh Nagar,
Uttar Pradesh-203207.

Versus

The Dy. General Manager,
Bank of Baroda,
Regional Office : 13, Mahatma Gandhi Road,
Agra (UP)-282001.

AWARD

The Ministry of Labour by its Letter No. L-12011/24/2005 [IR (B-II)] Central Government dt. 28-4-2005 has referred the following point for adjudication.

The point runs as hereunder :

“Whether the action of the management of Bank of Baroda in imposing the punishment of dismissal without notice from service w.e.f. 5-8-2003 on Shri Pawan Kumar, Peon, Clock Tower Branch, Ghaziabad on the alleged charges of misconduct leveled against him vide chargesheet No. UPWM/21/A&1/DSPRO : 1732 dated 20-10-2001 is legal and justified ? If not, to what relief the concerned workman is entitled.”

The workman applicant has filed statement of claim. In the claim statement it has been stated that he was posted as Cash Peon at Clock Tower Branch, Ghaziabad of Bank of Baroda (hereinafter referred to as the Bank). That while in service of the Bank the workman was placed under suspension by the Regional Manager/Disciplinary Authority, Regional Office : Moradabad of the Bank vide order No. UPWM/21/A&T/21 dated 12-1-2001.

That thereafter the workman concerned was served with an illegal chargesheet No. UPWM/21/A&1/DSPRO : 1732 dated 20-10-2001 by the opposite party No. 1.

That in the chargesheet itself, Shri R. C. Sharma, Sr. Manager, Ghaziabad (Main) Branch was appointed as Inquiry Officer thereby the workman was deprived of the opportunity to submit his explanation to the chargesheet. The charges are not in accordance with the allegation in the chargesheet rather general nature of charges have been levelled which are no charge.

3403 GI/07-49

That the Inquiry Officer commenced the inquiry on 3-12-2001 and concluded the same on 12-10-2002 whereafter submitted his report dated 16-1-2003 to the Assistant General Manager/Disciplinary Authority, Regional Office, Agra.

That the prosecution closed its evidence on 12-10-2001. The workman submitted list of 3 witnesses namely (1) Mr. Munna Lal Gupta, General Secretary of the applicant union. The workman had written various letters to Shri Munna Lal Gupta which was to be proved by him but the Ld. Inquiry Officer rejected the request of the workman alleging that the witness was not relevant without any valid reason. (2) The next proposed witness of the workman was Shri J. C. Bedwaria. He was posted in the same branch where the workman was posted at the time of alleged incident. He was able to disclose the facts of the case. The Inquiry Officer has denied to call the defence witness on the ground that this witness at this stage will have nothing new to add in the inquiry record and therefore, considered not relevant. The Inquiry Officer has failed to give any reason as to how he has come to the conclusion that the proposed witness would not add in the inquiry. This was pre-determined attitude of the Inquiry Officer. The denial of calling witness prejudices the case of the workman as the defence case starts only after close of prosecution case. (3) The third witness proposed by the workman was Shri N. K. Jain. The prosecution cited Shri N. K. Jain as its own witness and his examination-in-chief was recorded in the inquiry but the cross-examination could not be done on that day because the defence representative of the workman was not present. The witness was then never produced for cross-examination and the prosecution requested for discarding his evidence. It is undisputed that a witness of case is relevant for prosecution as well as for defence as the witness is the witness of fact. The denial of calling Shri Jain is violative of principles of natural justice.

That non-calling these three witnesses prejudiced the case of the workman and denied reasonable opportunity of defence. That the workman submitted a list of defence documents for summoning from the bank but most of the documents were not made available which is denial of reasonable opportunity to defence.

That it has been alleged in the chargesheet that the workman has withdrawn certain amounts fraudulently from S. B. A/c. No. 5840 of Shri Bhanwar Singh who allegedly made complaint but the said complainant has not been produced who happen to be the most relevant and material witness. The inquiry without material witness is liable to be vitiated.

That the Ex. ME-7, the complaint of Shri Bhanwar Singh has not been proved as per law. Hence, this document could not be relied upon but the Inquiry Officer has read it in evidence.

That the findings of the Inquiry Officer are perverse in law and facts both.

That MW-VII and MW-VIII have specifically stated during the inquiry that they had passed the cheques/withdrawals in question after duly verifying the signature

of the account holder of A/c. No. 5840. Hence, the basis of the allegation of payment on forged signature of the workman are away from the evidence on record.

The management has filed written statement. In the written statement it has been stated that in the facts and circumstances on record and the association's admission thereof the instant order of reference, in the terms specified for adjudication of this Hon'ble Tribunal, is incompetent and invalid inasmuch as the order dated 5-8-2003 terminating the workman's service could not lawfully form the basis of the instant reference by virtue of doctrine of merger.

That the government has arbitrarily drawn the terms of reference and made the instant reference order by baselessly assuming that the management terminated the workman's services (vide order dated 5-8-2003) without notice to and hearing him when, as matter of admitted fact on record, he was given full opportunity to defend him against the charges by the Inquiry Officer, Disciplinary and Appellant Authority.

That the existence of industrial dispute within the meaning and scope of Section 2(k) of the ID Act, 1947 could not have been assumed by the government because neither the workman Pawan Kumar was a member of the association nor did the association ever espouse the cause of Shri Pawan Kumar transforming his individual industrial dispute as envisaged u/s 2A of the ID Act, 1947 into a collective industrial dispute within the ambit and scope of Section 2(k) of the Act.

That the statement of claim which the association has filed is liable to be expunged and deleted as it is guilty of committing fraud on law by arbitrarily on its own without either leave of the Hon'ble Court or without getting the reference amended accordingly, impleading the Regional Manager as O. P. No. 1 when the Government has not so arrayed O. P. No. 1 as a party to the order of reference.

Without prejudice to the foregoing contention, the management of the bank begs to submit its reply of paragraphs of the association's statement of claim as to the merits of the case.

It is, however, reiterated that the order of reference is incompetent and invalid for the reasons mentioned hereinabove.

It is, however, stated with relevance that the workman Pawan Kumar was appointed as a Peon in the bank on compassionate grounds on account of his father's death in a train accident.

That the truth of the matter is that while working as a Peon in the bank's Clock Tower Branch at Ghaziabad, Pawan Kumar fraudulently withdrew a sum of Rs. 11,800 on different dates from the Savings Bank A/c. No. 5840 of bank's customer, Mr. Bhanwar Singh. On the complaint of bank's above name account holder the management advisedly and lawfully issued a chargesheet to which the union has referred to in para under reply of its SCO. It is, therefore, misconceived on the union's part that the

chargesheet issued to the workman Pawan Kumar was illegal or uncalled for.

That Shri R. C. Sharma, Sr. Manager, Ghaziabad Main Branch was simultaneously appointed as the Inquiry Officer so that the inquiry proceedings may be included as early as possible without undue delay and in doing so the management committed no wrong. All other averments of the union in para under reply are based on ignorance of mandate and pronouncements of law. It is stated that appointment of Inquiry Officer was not illegal nor any prejudice had been caused to the workman in the appointment of Shri R. C. Sharma as an Inquiry Officer. The union's averments that the workman, Pawan Kumar was deprived of an opportunity to submit his explanation to the memo of charges, is totally false because the workman had, in fact, submitted his explanation dated 29-11-2001 to the chargesheet addressed to the Disciplinary Authority before the commencement of the inquiry proceedings. Additionally, the charges levelled against the workman were specific and no allegation of vagueness of the same was ever made by the workman at any relevant point of time earlier than now with mala fide.

The workman applicant has filed rejoinder. In his rejoinder he has reiterated the averments of his claim statement and has denied most of the paras of the written statement. The management has also denied most of the paras of the claim statement.

It transpires from perusal of the order sheet that on 13-11-2006 the evidence of the workman was concluded and the management was directed to file affidavit. Affidavit of the management was not filed on 18-12-2006 and 9-1-2007. On 20-2-2007 the Ld. Counsel of the management stated that there is no need of any evidence of the management.

It was also submitted that award may be finally sent after argument. On 12-3-2007 the argument of both the parties was heard and the case was reserved for award.

It further transpires from perusal of the record that the records of the inquiry proceedings were not filed on the record. So notices were issued to both the parties for filing the record of the inquiry proceedings. Adjournment was sought on 3 occasions. On 19th July, 2007 it was stated by the management that the inquiry record is not traceable. Argument was advanced previously. So the case was posted for award.

From the perusal of the pleadings of the parties the following issues arise for determination :

1. Whether the reference is bad on the principles of merger of the orders and this Tribunal is not competent to adjudicate the matter ?
2. Whether the instant dispute is an Industrial Dispute ?
3. Whether the management has followed the principles of natural justice in the conduct of the inquiry ?

4. To what amount of back wages the workman is entitled ?

5. Relief if any ?

ISSUE NO. 1 :

It was submitted from the side of the management that the Central Government has sent the reference regarding the action of the management of the Bank of Baroda in imposing the punishment of dismissal without notice from service w.e.f. 5-8-2003 on Shri Pawan Kumar, the workman. The workman filed an appeal and his appeal was decided by order dated 18-9-2004. The order of Disciplinary Authority dated 5-8-2003 merged in the order of Appellate Authority dated 18-9-2004. So the appropriate government should have sent reference mentioning the date of dismissal as 18-9-2004 and not 5-8-2003, so the reference is not competent.

My attention was drawn from the side of the management to 1969 (19) 135. It has been held that the original decision merges in the appellate decision alone which is subsisting and capable of enforcement. In the instant case there is no question of enforcement. It is for declaring the order of the Disciplinary Authority invalid. The law of merger is not applicable in such circumstances.

It was submitted from the side of the workman that he was actually dismissed on 5-8-2003. It is the only date of his dismissal and principles of merger is not applicable in such circumstances. The appropriate government has sent the reference for deciding the legality or illegality of the dismissal. The workman was dismissed by the Disciplinary Authority by order dated 5-8-2003. It is in fact true that this dismissal order merged in the order of the Appellate Authority dated 18-9-2004 but the cause of action arose on 5-8-2003 when the Disciplinary Authority passed the order of dismissal that is why the appropriate government has referred the date of dismissal as 5-8-2003.

The substantial question to be decided in this reference is whether the dismissal is illegal or legal. The date of dismissal is not very much material.

It has been held in II LLJ 1967 Syndicate Bank Vs. Ram Nath page 1 that the date of order of dismissal is the date of the original order and not appellate order. In view of this judgment of the Hon'ble Apex Court, the date of the original order is the date of dismissal. The reference has been sent regarding dismissal on 5-8-2003. The original order is 5-8-2003, so the reference is competent.

It was further submitted that it has been held in AIR 1961 SC 857, AIR 1957 SS 804 that in view of the provisions of Section 7(A) and 10 of the ID Act, 1947 the Tribunal in law is under statutory obligation to adjudicate the disputes referred to it by the appropriate government. The Tribunal is under statutory obligation to decide this matter.

The law of merger is not applicable in this case.

The substantial point is as to when the workman was dismissed. The workman was initially dismissed on 5-8-2003 and not on the date of the appellate order, so the

reference is competent and the Tribunal has jurisdiction to adjudicate the matter. This issue is decided accordingly.

ISSUE NO. 2:

It was submitted from the side of the management that there is no proper espousal. There is no espousal and the workman Shri Pawan Kumar is not a member of the association and the association never espoused the cause of Shri Pawan Kumar. The Industrial Dispute has not been transformed into individual dispute under Section 2A of the ID Act, 1947. The contention of the management is misconceived. Under Section 2(A) the workman can alone raise this dispute. There is no need of espousal in view of the insertion of Section 2A. The matter relates to dismissal and it squarely covered u/s 2A. However, the case has been espoused by the Union of the applicant.

That even an un-registered union can raise the dispute or the substantial number of workmen can raise the dispute. In the instant case a registered union has espoused the dispute. Even the workman himself was competent to raise the dispute as the dispute is regarding dismissal. The dispute has been properly espoused. This issue is decided accordingly.

ISSUE NO. 3:

It was submitted from the side of the workman in Para-7 of the claim statement that he submitted a list of 3 witnesses namely S/Shri M. L. Gupta, G. S. of the applicant Union, J. C. Bedwaria, an employee of the branch where the workman was posted and the 3rd witness Shri N. K. Jain also an employee of the management.

It was submitted that the Inquiry Officer rejected the request of the workman alleging that the witnesses were not relevant.

Shri J. C. Bedwaria was posted in the same branch where the incident took place. He was a material witness. He could disclose the facts of the case, but the Inquiry Officer rejected the request of the workman and held that this witness at this stage will have nothing new to add in the inquiry record and considered this witness not relevant.

The Inquiry Officer refused to cross-examination of Shri N. K. Jain, an employee of the bank. Shri N. K. Jain was examined by the management as his own witness. The cross examination of this witness could not be done on that day. The workman requested to produce the witness for cross-examination but the Inquiry Officer rejected the request of the workman and held that the prosecution will discard his evidence. This witness is a witness of fact. He may disclose the real fact behind the embezzlement and he may also point as who was really involved in the embezzlement. The workman was not permitted to produce Shri Munna Lal Gupta, General Secretary of the applicant union. He was also not permitted to examine Shri J. C. Bedwaria, an employee of that branch and posted in that branch during the period of alleged incident. He was of course a material witness in the incident. His non-examination has prejudiced the case of the workman.

Shri N. K. Jain was also an employee of the branch and he was posted in that branch at the time of alleged

incident. He was also a material witness. The management may discard his evidence and give finding without considering the evidence of this witness but the workman has every right to cross-examine this witness. It appears that this witness was not ready to depose the version of the prosecution, so this witness was illegally withheld.

The management has filed reply to Para-7 of the claim and the averments of Para-7 of the claim has not been refuted by the management. It has been stated in reply that it is a matter of record and the same can be decided from the record of the inquiry proceedings. It has not been specifically stated that Para-7 of the claim is absolutely wrong. So it is found proved that the Inquiry Officer did not allow the 3 witnesses to be examined by the workman during the course of inquiry.

The workman has also filed affidavit and in his evidence also he has alleged in Para-9 that he was not permitted to examine these three witnesses.

I have perused the cross-examination of the workman, no question has been asked from the workman regarding these 3 witnesses. So it stands established from the claim, written statement and the evidence of the workman that the management did not permit the workman to produce the 3 witnesses, two of whom were posted as employee of the bank in that branch itself. Thus, the management has not given opportunity to adduce the evidence in his defence.

It was submitted from the side of the management that the workman has deposited Rs. 11,800. Photocopy of the deposit slip has been filed. The workman on 10-1-2001 has sent letter to the Regional Manager and he has alleged in that letter that the Branch Manager, Shri B. C. Gupta on 9-1-2001 called him to his cabin and told him that he has embezzled Rs. 11,800 and an FIR can be lodged against him. He may be dismissed. The workman replied, that FIR may be registered against him but the Branch Manager compelled him to write on a plain paper what he dictated and he got his signature on deposit slip in which the amount of Rs. 11,800 was mentioned.

This complaint of the workman has been sent by registered post on 10-1-2001 and it has been stated that the Branch Manager, Shri B. C. Gupta compelled him to put his signature on the deposit slip of Rs. 11,800, so the contention of the management that the workman deposited the amount is absolutely wrong.

The deposit slip filed by the management appears to be false. Photocopy of statement of account no. 5840, paper no. B-155 has not been denied by the management. So paper no. B-155 is the correct account statement of account no. 5840 of Shri Bhanwar Singh. From perusal of this statement it becomes obvious that on 16-1-2001 by credit transaction Rs. 11,800 was deposited in the account of Shri Bhanwar Singh. The management has not explained as to why the amount of Rs. 11,800 was deposited through credit transaction in case the workman signed the deposit slip of Rs. 11,800, it appears that the deposit slip was got signed by the workman but the management came to know of the complaint of the workman, so the money was

deposited through cheque. The management could have ascertained who deposited Rs. 11,800 by cheque on 16-1-2001 in the account of Shri Bhanwar Singh. From whose account the money is said to be embezzled. This also discloses that there was some person behind this forgery and to avoid further inquiry he deposited Rs. 11,800 through cheque and the workman was falsely implicated in this case.

It was submitted that in Para-13 of the claim it has been specifically stated that during the inquiry MW-7 and MW-8 have deposed that they had passed the cheques/withdrawals in question after duly verifying the signature of the account holder of account no. 5840. Hence, the basis of the allegation of the payment for forged signature of the workman are away from the evidence on the record.

The management has filed reply to Para-13 and this para has not been denied, so it is found proved that MW-7 and MW-8, the Passing and Verifying Officers have deposed in the inquiry that they passed the cheques/withdrawals in question after verifying the signature. So the case of the management that the workman forged the cheques/withdrawals becomes absolutely false. The management was required to file the inquiry proceedings on the record so that the evidence of the witnesses may be perused but it has been stated that the inquiry records are not traceable.

The matter relates to 2001. The inquiry record is a valuable document. The management has dismissed the workman on the basis of the inquiry conducted by the management. It cannot be said that the workman stole the documents of inquiry as he was not in service. He was under suspension and the record of the inquiry proceedings are out of his reach. This also indicates that some material and grave irregularities have been committed by the Inquiry Officer in the course of the inquiry and to conceal these illegalities and irregularities, the inquiry record has not been produced for my perusal. I have based my findings on the claim statement and its admission in the written statement and the evidence of the workman. The management was given ample opportunity to adduce evidence but the management did not avail of that opportunity. This also indicates that conspiracy has been hatched against the workman to save the real culprit and the management has deliberately concealed the entire evidence from the approach of the Tribunal.

Thus, it is vivid that the Inquiry Officer has not permitted the workman to adduce his evidence in defence. 2 of the witnesses proposed to be examined by the workman are material witnesses. They were posted at the time of incident in that branch. The Inquiry Officer should not have rejected their evidence. The workman was not permitted to examine material witnesses in his defence. Thus, the principles of natural justice have not been followed by the Inquiry Officer.

The management relied on the inquiry proceedings. The inquiry records have not been filed. In the absence of the inquiry records the management cannot justify that

adequate opportunity has been given to the workman to examine his own witness. Inquiry records are very much material for deciding whether the principles of natural justice have been followed or not. The inquiry records are to be produced by the management. The management has stated that inquiry records are lost. This also indicates that the Inquiry Officer held the inquiry in suspicious circumstances.

It has been held in AIR 1964 SC 708 that reluctance of the Inquiry Officer to enable the delinquent employee to adduce evidence also vitiates the principles of natural justice. In the instant case the workman has been denied the opportunity to produce material witnesses and so the principles of natural justice have been violated by the Inquiry Officer.

In the facts and circumstances of the case it is held that principles of natural justice have not been observed by the Inquiry Officer. He has deprived the workman from adducing his evidence. The inquiry is not empty formality. The chargesheeted employee has a right to adduce his defence evidence. In the circumstances the inquiry stands vitiated. This issue is decided accordingly.

ISSUE NO. 4:

It was submitted from the side of the workman that he has been illegally involved in the embezzlement. This is an act of some other official but this workman has been made victim. He should be reinstated with full back wages.

It is true that reinstatement does not follow full back wages as consequence. It is not the natural course of reinstatement. No hard and fast rules have been laid for awarding back wages. It depends upon the facts and circumstances of the particular case. There is no straight jacket formula for awarding back wages. In the instant case it appears that the workman has been falsely implicated, so he is entitled to get full back wages. This issue is decided accordingly.

ISSUE NO. 5:

The workman is entitled to reinstatement with full back wages and continuity of service and all the consequential benefits w.e.f. 5-8-2003.

The reference is replied thus :

The action of the management of Bank of Baroda in imposing the punishment of dismissal without notice from service w.e.f. 5-8-2003 on Shri Pawan Kumar, Peon, Clock Tower Branch : Ghaziabad on the alleged charges of misconduct leveled against him vide chargesheet No. UPWM/21/A&1/DSPRO : 1732 dated 20-10-2001 is neither legal nor justified. The management should reinstate the workman along with 100 per cent back wages and continuity of service and all the consequential benefits within two months from the date of publication of award.

The award is given accordingly.

Date : 20-7-2007

R. N. RAI, Presiding Officer

दिल्ली, 31 जुलाई, 2007

का. आ. 2356.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केनरा बैंक के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय एर्नाकुलम के पंचाट (संदर्भ संख्या 34/2006 और 35/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-7-2007 को प्राप्त हुआ था।

[सं. एल-12011/292/2003-आई आर (बी-II)]

[सं. एल-12011/287/2003-आई आर (बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 31st July, 2007

S. O. 2356.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award, (Ref. No. 34/2006 & 35/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam as shown in the Annexure, in the Industrial Dispute between the management of Canara Bank and their workmen, which was received by the Central Government on 31-7-2007.

[No. L-12011/292/2003-IR (B-II)]

[No. L-12011/287/2003-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

PRESENT

Shri P. L. Norbert, B.A., LL.B., Presiding Officer

(Monday the 23rd day of July, 2007/1st Sravana, 1929)

LD. Nos. 34/2006 & 35/2006

I.D. No. 34/2006

(I.D. No. 7/2004 of Labour Court, Ernakulam)

Workman/Union : The Assistant Secretary
Canara Bank Staff Union
Kerala Regional Committee
41/2201, Ernakulam North,
Ernakulam

Adv. Shri Ashok B. Shenoy

Management : The Deputy General Manager
Canara Bank, Staff Section (W)
Circle Office,
Thiruvananthapuram

Adv. Shri R. S. Kalkura

LD. No. 35/2006

(I.D. No. 8/2004 of Labour Court, Ernakulam)

Workman/Union : The Assistant Secretary
Canara Bank Staff Union
Kerala Regional Committee
41/2201, Ernakulam North,
Ernakulam

Adv. Shri Ashok B. Shenoy

Management : The Deputy General Manager
Canara Bank, Staff Section (W),
Circle Office,
Thiruvananthapuram.

Adv. Shri R. S. Kalkura

AWARD

These are reference made by Central Government under Section 10(1)(d) of Industrial Disputes Act, 1947 for adjudication. The reference are common and the schedule of the reference is as follows :

"Whether the action of the management of M/s. Canara Bank in not regularizing the services of Smt. is legal and justified ? If not, what relief Smt. is entitled to ?"

2. Since the facts and evidence are common these cases are tried together and evidence is adduced in I.D. No. 34/2006. The facts in brief are as follows :—

The cause of workers, Smt. T.A. Kanchana and Smt. K.N. Sindhu, is espoused by the union. According to the union, Smt. Kanchana was working in Chentrapinni Branch of Canara Bank since 28-5-1987 in leave vacancy of permanent part-time sweeper. The permanent part-time sweeper retired on 1-9-2001. Smt. Kanchana continued to work as part-time sweeper in the permanent vacancy and she continues even now. The management however did not absorb her in the permanent vacancy. She has worked continuously for more than 240 days and rendered service to the satisfaction of the management. She is entitled to be absorbed in the permanent vacancy. Smt. Sindhu was working in Foreign Department of the Bank at Ernakulam as part-time sweeper in leave vacancy since 1992. The permanent part-time sweeper retired on 1-7-2000. Smt. Sindhu continued to work in the permanent vacancy till 22-11-2001 in Foreign Department and thereafter she was transferred to Eroor Branch and she continues as part-time sweeper even now. She is not absorbed. She has put in more than 240 days' continuous service in the permanent vacancy and is entitled for absorption.

3. According to the management both part-time sweepers were working in leave vacancy. That arrangement was made between permanent part-time sweepers and their substitutes. It is the stipulation of the bank that permanent part-time sweepers whenever they are on leave will have to make alternate arrangement. Even after permanent vacancy arose the claimants in these cases were working as casual PTEs. Since they did not conform to the norms they could not be absorbed. They were over-aged and over-qualified

for the purpose of absorption. Whenever these two part-time sweepers worked they were paid wages as well as bonus. However they are not eligible to be absorbed in the permanent post of PTEs.

4. In the light of the above contentions the only point that arises for consideration is :

“Are the claimants eligible for absorption?”

The evidence consists of the oral testimony of WW1 to 3 and documentary evidence of Exts. W1 to W9 on the side of union and MW1 and Exts. M1 to 3 on the side of management.

5. The Point :

It is an admitted fact that Smt. Kanchana and Sindhu were working as part-time sweepers initially in leave vacancy in Chentrapinni Branch and Foreign Department, Emakulam respectively. The permanent part-time sweepers, Smt. Kurumbakutty and Smt. Janu are mothers of respective claimants. They retired on 1-9-2001 and 1-7-2000 respectively from their respective Branches. The claimants continued to work in the permanent vacancy thereafter as casual PTEs. However Smt. Sindhu was transferred to Eroor Branch on 22-11-2001 while another part-time sweeper employed in another branch was transferred to Foreign Department. Ext. W2 is a reply statement submitted before ALC (C) by Canara Bank with details of engagement of Smt. Kanchana. It shows that Smt. Kanchana worked in the permanent vacancy continuously without break from September, 2001 to September, 2002. It means, she had worked for more than 240 days continuously or for 12 calendar months continuously in a year in permanent vacancy. Ext. W6 is a reply statement of management bank submitted to ALC with details of engagement of Smt. Sindhu. It reveals that Smt. Sindhu worked in the permanent vacancy from July, 2000 to July, 2001 continuously and without break. She too did work more than 240 days continuously or 12 calendar months continuously in a year. Both of them are thus ‘workmen’ falling within S-2(s) of Industrial Disputes Act. They are still continuing as casual part-time sweepers. However the question referred is, whether their demand for absorption is proper and justified?

6. The 1st contention of the management is that by virtue of continuous service as casual labourers, whether in leave vacancy or in permanent vacancy, they do not acquire any right for absorption. The Bank has recruitment process and norms for selection to permanent posts. The workers in these cases did not conform to the norms for selection to the post of PTE. Ext. M1 is copy of Minutes of the Joint Conference between the representatives of management and union regarding filling up of permanent vacancies of a sub-staff and PTEs. In Para 2 it is mentioned that management will work out modalities regarding filling up of the posts of PTEs in different scale wages. Ext. M2 is a circular of bank dated 5-10-2000 regarding revised procedure for upward movement of part-time employees in scale wages. Page 2, Clauses (a) to (c) refer to upward movement from 1/3 scale wage to 1/2 scale wage and then to 3/4 scale wage. The consequential vacancy that arises in

1/3 scale wage is to be filled up by regular recruitment process; Ext. M3 is circular dated 23-12-1993 containing recruitment norms for PTEs. Separate norms are prescribed for PTEs on daily wage basis and for absorption of PTEs in scale wages. The age and qualification are prescribed in Ext. M3. For absorption in scale wages generally candidates should be between 18—26 years and SC/ST candidates are eligible for 10 years’ age relaxation. Educational qualification is 5th standard and maximum 9th standard but should not have passed 9th standard. According to the management when the vacancy arose in Chentrapinni Branch as well as Foreign Department, Ernakulam on 1-9-2001 and 1-7-2000 respectively, Smt. Kanchana, an SC candidate was aged 34 years and Smt. Sindhu, an OBC 26 years. So far as Smt. Sindhu is concerned, her educational qualification was 11th standard. Thus Smt. Kanchana was over-aged and Smt. Sindhu was over-qualified at the relevant time. Therefore it is contended by the management that both of them did not conform to the norms. Ext. M3 norms also specify that the Deputy General Manager of the management Bank has discretion to relax norms with regard to age. However, as rightly pointed out by the learned counsel for the management, with regard to educational qualification no such power is given to DGM or any other officer of the bank. Smt. Kanchana had studied upto 8th standard and that is in accordance with norms. But she was aged 34 years at the time when permanent vacancy arose and she was eligible to get 5 years’ relaxation being an SC candidate. However, even then age limit would have been 31 years. She was over-aged. The management did not think it necessary to relax age limit so far as Smt. Kanchana was concerned. Smt. Sindhu was aged only 26 years, within the limit. But her educational qualification was higher (11th standard) which could not be relaxed by the management. Going by the norms in Ext. M3, the management cannot be found fault with for not selecting the claimants.

7. However it was argued by the learned counsel for the claimant that Ext. M2 & 3 are only circulars and they do not have the force of Rules. As per Ext. 1 Minutes of Joint Conference between the representatives of management and union, they had agreed that the management could work out modalities for recruitment of PTEs. It is in pursuance to the said decision in the conference of 8-6-2000 that Ext. M2 circular was issued. Though Ext. M3 is dated 23-12-1993 no deviation with regard to norms in Ext. M3 is made in Ext. M2 circular of 2000, while revising the procedure for filling up the vacancies of PTEs. It is on the basis of the consent between the parties that Ext. M2 was issued by the bank. Therefore even if Ext. M2 & M3 are not Rules framed by the bank they have the binding force in view of the agreement between the parties in Ext. M1 and the authority given to the management to draw up modalities for recruitment.

8. The vacancy in Chentrapinni Branch is not filled up by regular recruitment so far. But the vacancy in Foreign Department, Ernakulam was substituted by another candidate from another branch while Smt. Sindhu was transferred to Eroor Branch. But in Eroor Branch there is a permanent part-time sweeper. Hence there is no permanent vacancy in that Branch. The claim of Smt. Sindhu, therefore,

pertains to the permanent vacancy in Foreign Department. That arose when she was in Foreign Department. However, as already mentioned, unless the claimants conform to the norms prescribed by the Bank their candidature cannot be considered by the bank.

9. However it was argued by the learned counsel for the union that the bank was not strictly following norms in Ext. M3 and there are instances when temporary part-time sweepers were absorbed in permanent vacancy. To substantiate this contention the learned counsel relies on an award of this Court in C.R. 3 & 4 of 2004 dated 30-11-2005. Ext. W9 is copy of the award. No doubt in that case instances of absorption of temporary part-time sweepers are pointed out as proved, deviating from the norms for recruitment of PTEs. But it is submitted by the learned counsel for the management that the award is under challenge in Writ Petition before Hon'ble High Court. Therefore no part of the award has become final so as to accept it in evidence in the present cases. That apart, it is the duty of the union to plead and prove any custom or practice that is followed by the bank deviating from the norms in circular. There is no such plea in the claim statement nor is there proof of such practice or custom. No doubt, the union had called for files relating to appointments of PTEs in different branches. But they were neither produced nor an affidavit was filed by the management. By I.A. 41/2006 daily wage registers and files relating to appointments of permanent part-time employees of so many branches in Kerala were called for. Despite the fact that the Bank did not file an affidavit it is self-evident that the union had called for too many registers from too many branches without specifying the period. It is not an easy task to trace out records of Daily Wage Registers of all times and files of appointments of all times in several branches and produce them. In the circumstances, therefore, no adverse inference can be drawn against the management. If the union was certain about the branches where appointments were made deviating from the norms they could have alleged in the claim statement specific instances of absorption of such temporary PTEs in specific branches and call for only those records relating to only those branches and of the relevant period. The union, thus, failed to prove the practice or custom that they put forward during evidence stage and argument. The workers in these cases by reason only of working in permanent vacancies, do not acquire a right for absorption. The decision in Secretary State of Karnataka v. Uma Devi (2006) 4 SCC 1 (paragraph 53) refers to a position when temporary employees are working in permanent vacancies for a very long time (10 years or so), for consideration as one time absorption. But that is not the case in these references. At the time of raising the dispute they had put in about 3 years' service in the permanent vacancies. On the other hand the decision says that generally no temporary or ad hoc or casual employee is entitled for absorption however long they have been working as such. Therefore Uma Devi's case will not come to the aid of workers in these cases.

10. In the result, an award is passed finding that the action of the management in not absorbing Smt. T. A. Kanchana and Smt. K. N. Sindhu in the post of permanent

PTEs is legal and justified. No cost. The award will take effect one month after its publication in the official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 23rd day of July, 2007.

P. L. NORBERT, Presiding Officer

APPENDIX

Witness for the Workman/Union :

WW1 - Smt. T.A. Kanchana—15-12-2006.

WW2 - Smt. K.N. Sindhu—16-3-2007.

WW3 - Shri K.V. George—16-3-2007.

Witness for the Management :

MW1 - Shri B. Hari—6-6-2007.

Exhibits for the Workman/Union :

W1 - Copy of reply statement dated 23-8-2003 submitted by management before ALC(C).

W2 - Reply statement dated 27-10-2003 submitted by management before ALC(C).

W3 - Photostat copy of Minutes of Conciliation Meeting before ALC(C) dated 28-10-2003.

W4 - Copy of Failure of Conciliation Report dated 18-11-2003 sent to M/o Labour by ALC(C).

W5 - Copy of reply statement dated 23-8-2003 submitted by management before ALC(C).

W6 - Reply statement dated 27-10-2003 submitted by management before ALC(C).

W7 - Photostat copy of Minutes of Conciliation Meeting before ALC(C) dated 28-10-2003.

W8 - Copy of Failure of Conciliation Report dated 11-11-2003 sent to M/o Labour by ALC(C).

W9 - Photostat copy of common award passed in C.R. 3 & 4 of CGIT-cum-Labour Court, Ernakulam.

Exhibits for the Management :

M1 - Photostat copy of Minutes of Joint Conference between unions and management, dated 8-6-2000.

M2 - Photostat copy of letter No. PWPM : 6099 : 38 : NKB dated 5-10-2000 regarding upward movement of PTEs in scale wages.

M3 - Photostat copy of letter No. PWPM 949238 MGO reg. recruitment norms for PTEs and related guidelines.

नई दिल्ली, 27 जुलाई, 2007

का. आ. 2357. — जबकि मैसर्स सीमेन्स पब्लिक कम्यूनिकेशन्स नेटवर्क लिमिटेड, बेंगलूर (कर्नाटक क्षेत्र में कोड संख्या के एन/23336 के तहत) (इसके पश्चात् प्रतिष्ठान के रूप में उल्लिखित) ने कर्मचारी भविष्य निधि एवं प्रकीर्ण उपबंध अधिनियम, 1952 (1952 का 19)

(इसके पश्चात् अधिनियम के रूप में उल्लिखित) की धारा 17 की उप-धारा (1) के खण्ड (क) के अंतर्गत छूट के लिए आवेदन किया है।

2. और जबकि, केन्द्र सरकार के विचार में अंशदान की दरों के संबंध में उक्त प्रतिष्ठान के भविष्य निधि नियम, उक्त अधिनियम की धारा 6 में विनिर्दिष्ट की तुलना में कर्मचारियों के लिए कम अनुकूल नहीं है और कर्मचारी, उक्त अधिनियम के अंतर्गत अथवा इसी प्रकार के किसी अन्य प्रतिष्ठान में कर्मचारियों के संबंध में कर्मचारी भविष्य निधि स्कीम, 1952 (इसके पश्चात् स्कीम के रूप में उल्लिखित) के अंतर्गत प्रदान किए जा रहे अन्य भविष्य निधि लाभों का भी फायदा उठा रहे हैं।

3. अतः, अब, केन्द्र सरकार उक्त अधिनियम की धारा 17 की उप-धारा (1) के खण्ड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, और समय-समय पर इस संबंध में उल्लिखित शर्तों के अधधीन केन्द्र सरकार एतद्द्वारा उक्त प्रतिष्ठान को 10-8-1997 से अगली अधिसूचना तक उक्त स्कीम के सभी उपबंधों के प्रचालन से छूट प्रदान करती है।

[संख्या एस-35015/8/2006-एस.एस.-II]

एस.डी. जेवियर, अवर सचिव

New Delhi, the 27th July, 2007

S.O. 2357.—Whereas M/s Siemens Public Communications Network Limited, Bangalore (under Code No. KN/23336 in Karnataka region) (hereinafter referred to as the establishment) has applied for exemption under clause (a) of sub-section (1) of Section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) (hereinafter referred to as the Act).

2. And whereas in the opinion of the Central Government, the rules of the provident fund of the said establishment with respect to the rates of contribution are not less favourable to employees therein than those specified in Section 6 of the said Act and the employees are also in enjoyment of other provident fund benefits provided under the said Act or under the Employees' Provident Funds Scheme, 1952 (hereinafter referred to as the Scheme) in relation to the employees in any other establishment of similar character.

3. Now, therefore, in exercise of the powers conferred by clause (a) of sub-section (1) of Section 17 of the said Act and subject to the conditions specified in this regard from time to time, the Central Government, hereby, exempts the said establishment from the operation of all the provisions of the said Scheme with effect from 10-8-1997, until further notification.

[No. S-35015/8/2006-SS-II]

S. D. XAVIER, Under Secy.

नई दिल्ली, 31 जुलाई, 2007

का. आ. 2358.—जबकि मैसर्स रिलायंस ग्रुप सपोर्ट सर्विसेज लिमिटेड, जामनगर (गुजरात क्षेत्र में कोड संख्या जी जे/40551 के

तहत) (इसके पश्चात् प्रतिष्ठान के रूप में उल्लिखित) ने कर्मचारी भविष्य निधि एवं प्रकीर्ण उपबंध अधिनियम, 1952 (1952 का 19) (इसके पश्चात् अधिनियम के रूप में उल्लिखित) की धारा 17 की उप-धारा (1) के खण्ड (क) के अंतर्गत छूट के लिए आवेदन किया है।

2. और जबकि, केन्द्र सरकार के विचार में अंशदान की दरों के संबंध में उक्त प्रतिष्ठान के भविष्य निधि नियम, उक्त अधिनियम की धारा 6 में विनिर्दिष्ट की तुलना में कर्मचारियों के लिए कम अनुकूल नहीं है और कर्मचारी, उक्त अधिनियम के अंतर्गत अथवा इसी प्रकार के किसी अन्य प्रतिष्ठान में कर्मचारियों के संबंध में कर्मचारी भविष्य निधि स्कीम, 1952 (इसके पश्चात् स्कीम के रूप में उल्लिखित) के अंतर्गत प्रदान किए जा रहे अन्य भविष्य निधि लाभों का भी फायदा उठा रहे हैं।

3. अतः, अब, केन्द्र सरकार उक्त अधिनियम की धारा 17 की उप-धारा (1) के खण्ड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, और समय-समय पर इस संबंध में उल्लिखित शर्तों के अधधीन केन्द्र सरकार एतद्द्वारा उक्त प्रतिष्ठान को 1-4-2001 से अगली अधिसूचना तक उक्त स्कीम के सभी उपबंधों के प्रचालन से छूट प्रदान करती है।

[संख्या एस-35015/22/2007-सा.सु.-II]

एस.डी. जेवियर, अवर सचिव

New Delhi, the 31st July, 2007

S.O. 2358.—Whereas M/s Reliance Group Support Services Ltd., Jamnagar (under Code No. GJ/40551 in Gujarat region) (hereinafter referred to as the establishment) has applied for exemption under clause (a) of sub-section (1) of Section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) (hereinafter referred to as the Act).

2. And whereas in the opinion of the Central Government, the rules of the provident fund of the said establishment with respect to the rates of contribution are not less favourable to employees therein than those specified in Section 6 of the said Act and the employees are also in enjoyment of other provident fund benefits provided under the said Act or under the Employees' Provident Funds Scheme, 1952 (hereinafter referred to as the Scheme) in relation to the employees in any other establishment of similar character.

3. Now, therefore, in exercise of the powers conferred by clause (a) of sub-section (1) of Section 17 of the said Act and subject to the conditions specified in this regard from time to time, the Central Government, hereby, exempts the said establishment from the operation of all the provisions of the said Scheme with effect from 1-4-2001, until further notification.

[No. S-35015/22/2007-SS-II]

S. D. XAVIER, Under Secy.

नई दिल्ली, 31 जुलाई, 2007

का. आ. 2359.—केन्द्रीय सरकार संतुष्ट है कि लोकहित में ऐसा अपेक्षित है कि भारतीय खाद्य निगम में सेवाओं को जिसे औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की प्रथम अनुसूची की प्रविष्टि 6 के अन्तर्गत निर्दिष्ट किया गया है, उक्त अधिनियम के प्रयोजनों के लिए लोक उपयोगी सेवाएं घोषित किया जाना चाहिए।

अतः अब, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (द) के उप-खण्ड (6) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के लिए तत्काल प्रभाव से छः मास की कालावधि के लिए लोक उपयोगी सेवा घोषित करती है।

[संख्या एस-11017/5/91-आई. आर. (पी. एल.)]

गुरजोत कौर, संयुक्त सचिव

New Delhi, the 31st July, 2007

S.O. 2359.—Whereas the Central Government is satisfied that the public interest requires that the services in the Food Corporation of India (FCI) which is covered by item 6 of the First Schedule to the Industrial Disputes Act, 1947 (14 of 1947), should be declared to be a Public Utility Service for the purposes of the said Act.

Now, therefore, in exercise of the powers conferred by sub-clause (vi) of clause (n) of Section 2 of the Industrial Disputes Act, 1947, the Central Government hereby declares with immediate effect the said industry to be a Public Utility Service for the purpose of the said Act for a period of six months.

[No. S-11017/5/91-IR (PL)]
GURJOT KAUR, Jt. Secy.